

APPENDIX

**REPORT OF THE
RECONVENED
JOINT COMMITTEE
ON
CRIMINAL JUSTICE**

COMMITTEE MEMBERS

Chief Justice Stuart Rabner, Chair

Glenn A. Grant, Administrative Director of the Courts,
Subcommittee on Data Analysis, Chair

Hon. Ernest Caposela, Assignment Judge, Passaic Vicinage,
Subcommittee on Pretrial Process, Chair

Hon. Lisa Thornton, Assignment Judge, Monmouth Vicinage,
Subcommittee on Pretrial Services, Chair

Matthew Platkin, Attorney General

Joseph Krakora, Public Defender

Hon. Jeanne Covert, Assignment Judge, Burlington Vicinage

Hon. Louis J. Belasco, Presiding Judge, Municipal Court, Atlantic Vicinage

Hon. Edward J. McBride, Presiding Judge, Criminal, Camden Vicinage

Matthew Adams, President ACDL/Partner, Fox Rothschild

Eugene J. Caldwell, II, President, Jail Wardens Association

Thomas Dellane, President, New Jersey State Association of Chiefs of Police

John Donnadio, Executive Director, New Jersey Association of Counties

Kevin Logan on behalf of Assemblyman John DiMaio, Minority Leader, Assembly
(Observation Only)

Jessica Lyons, Assistant Public Defender

Charles McKenna Partner, Riker Danzig

Pearl Minato, Director, Division of Criminal Justice

Michael Molimock and Sara Fletcher, on behalf of Senator Steven V. Oroho,
Minority Leader, Senate (Observation Only)

Sheriff Robert Nolan, Vice President, Sheriff's' Association of New Jersey

Jennifer M. Perez, Director of Trial Court Services, New Jersey Judiciary

Alexander Shalom, Senior Supervising Attorney and Director of Supreme Court
Advocacy, American Civil Liberties Union of New Jersey

Jeffrey Sutherland, Prosecutor, Cape May, President, County Prosecutors Association of NJ

Laura Sutnick, Partner, Sutnick and Sutnick, LLC

Albertina Webb, President, Hispanic Bar Association of New Jersey

Yannick Wood, Director, Criminal Justice Reform Program, Institute for Social Justice

Gregg Zeff, NAACP - NJ Legal Redress Coordinator

Committee Staff:

Nicholas W. Salamon, Esq., Statewide Pretrial Services Manager (AOC)

Justin M. Patterson Moles, Esq., Chief, Criminal Practice Division (AOC)

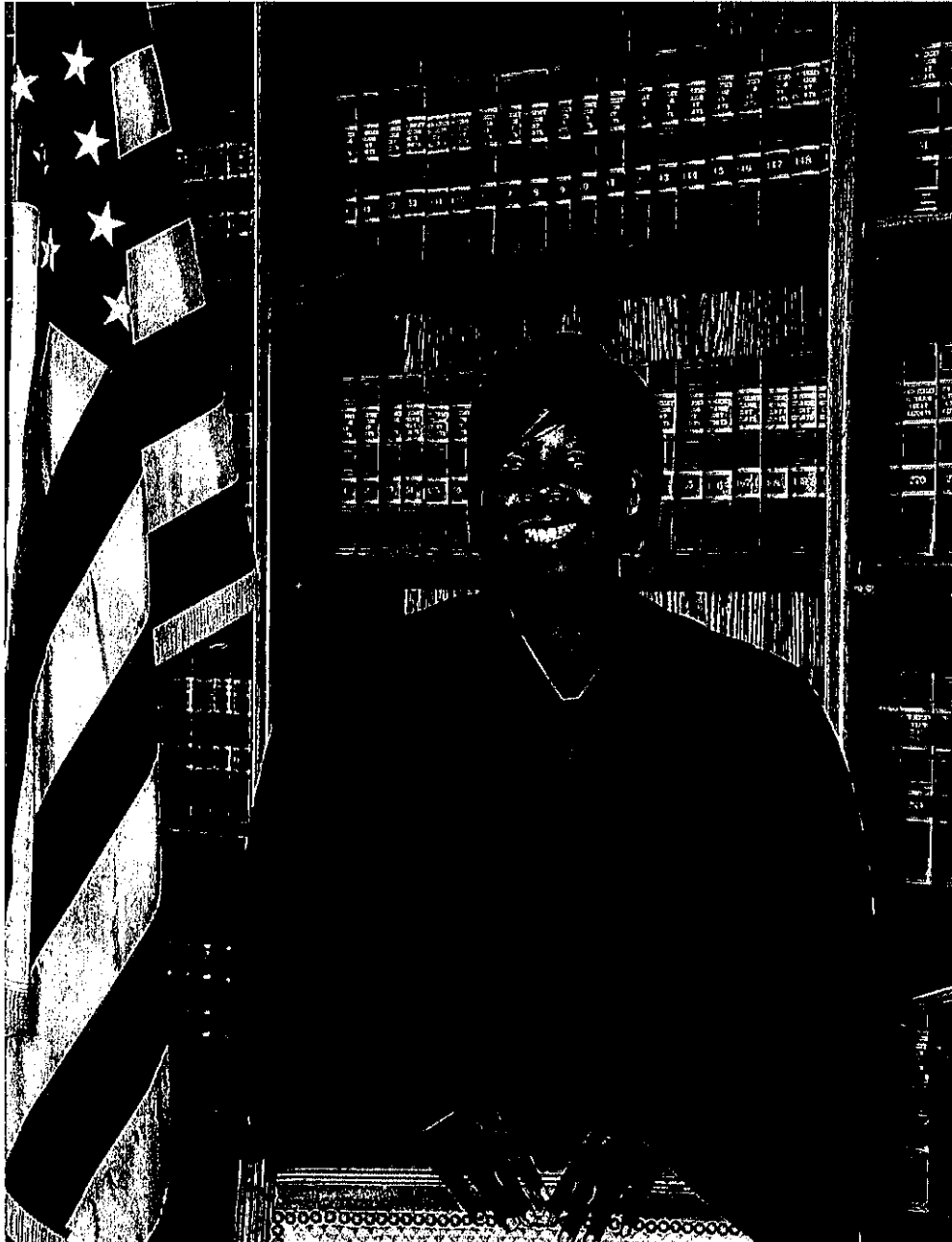
Susan Mary Fahey, Ph.D., Criminal Research Manager (AOC)

Ericha M. Davis, Administrative Specialist (AOC)

Andrea Johnson, Esq., Legislative Liaison (AOC)

Pamela Gellert, Esq., Legislative Liaison (AOC)

*This report is dedicated in memory of Assignment
Judge Lisa P. Thornton, chair of the
Subcommittee on Pretrial Services.*



EXECUTIVE SUMMARY

➤ The Past: Original Joint Committee on Criminal Justice

By June 2013, New Jersey's criminal justice system was at a crossroads, beholden to a process that prioritized an individual's ability to pay cash bail over the risk posed to the community if the person were released pending trial. To examine alternatives to that framework, the Chief Justice established the Joint Committee on Criminal Justice and invited prosecutors, defense counsel, advocacy groups, and representatives from each branch of government to consider a new approach to criminal justice.

In March 2014, the Committee issued a comprehensive report to the Legislative and Executive Branches¹ that described the core concern as follows:

The current system presents problems at both ends of the spectrum: defendants charged with less serious offenses, who pose little risk of flight or danger to the community, too often remain in jail before trial because they cannot post relatively modest amounts of bail, while other defendants who face more serious charges and have access to funds are released even if they pose a danger to the community or a substantial risk of flight ... (at p.2)

The resulting criminal justice reform (CJR) measures implemented in New Jersey -- including the adoption of an objective, risk-based system to set conditions of release, a program for supervised pretrial release, a constitutional amendment allowing for pretrial detention of defendants who pose a substantial risk of flight or danger to the community, and the enactment of a speedy trial law -- fundamentally improved the landscape of our criminal justice system. As a result of those interlocking reforms, people with limited economic means who pose minimal risk to

¹ Report of the Joint Committee on Criminal Justice (njcourts.gov).

society are no longer held in jail awaiting trial, while higher-risk defendants cannot buy their pretrial release.

CJR has advanced key objectives: (1) reduction in detention of people charged with minor offenses; (2) consistent incarceration of defendants accused of serious crimes; (3) prevention of new criminal activity; and (4) improved court appearance rates for people on pretrial release.

- In 2012, before the implementation of CJR, nearly 12% of New Jersey's county jail population -- just over 1,500 people -- remained in custody because they could not post bail of \$2,500 or less.² By October 7, 2020, that number had decreased to 0.2% and has remained consistently low through 2022.
- Whereas in 2012, more than half of the jail population was comprised of people not charged with violent crimes, sex crimes, or weapons offenses.³ Today, individuals charged with 1st or 2nd degree offenses comprise more than two-thirds of the jail population, meaning that most of those detained have been accused of serious crimes.
- Nearly all defendants released successfully complete their pretrial period without acquiring a new charge, with the rate of rearrest for very serious crimes at less than 1% annually since 2018.
- Defendants released pretrial today also appear for court more consistently than before CJR: in 2014, the court appearance rate was 92.7% as compared to 97.1% in 2020.

² Marie VanNostrand, Ph.D., New Jersey Jail Population Analysis (March 2013).

³ Of those inmates in custody on October 3, 2012, 43.9% were charged with either a violent, sex or weapon offense. Conversely, more than half of all inmates had primary charges that are considered non-violent such as drug (17%), theft/fraud (8%) and traffic (5%).

➤ The Present: Reconvened Joint Committee on Criminal Justice

The diminished use of monetary bail combined with the use of an objective, risk-based assessment for pretrial release, have sustained the safety of our communities while positioning New Jersey as a national model for criminal justice reform. Despite that progress, however, the Covid-19 pandemic strained resources and inhibited normal court operations, resulting in a significant increase in the number of defendants on pretrial release -- from 30,000 as of January 2020 to 46,000 today - - and prompting questions about the future of CJR.

Committed to the collaboration started in 2013, the Chief Justice in January 2023 consulted with key stakeholders and Executive and Legislative leaders and then reconvened the Joint Committee on Criminal Justice. Although each member brought a unique perspective and particular views on criminal justice, the broad-based Committee is in agreement about the early success and ongoing benefits of CJR as well as its current challenges and areas in need of improvement.

- *CJR Strengths and Benefits*

At the Committee's first meeting, each member shared their thoughts on CJR, with the group in unanimous agreement that New Jersey's risk-based criminal justice system remains superior to the former cash bail model. Members also stated that CJR in general has worked as intended, with preventive detention supporting public safety through incarceration of high-risk offenders while low-risk individuals return to their employment, families, and communities pending trial.

The Committee recognized the productive working relationships among stakeholders and affirmed the importance of the discretion afforded to law enforcement officers, prosecutors, and judges at various points in the pretrial process. Several members noted that CJR had strengthened the entire criminal justice process through broader understanding and enhanced use of data analysis and reporting.

Without exception, the Committee agreed that any improvements to the system should be grounded in data and evidence.

- *CJR Concerns and Areas for Improvement*

The Committee identified and discussed specific concerns, including questions related to defendants who are repeatedly arrested and the rate of new offenses for defendants who have pending charges at the time of arrest.

- For the large number of defendants arrested in 2021 with no pending charges at the time of their current offense, more than 80% successfully completed their pretrial period without any additional arrests. In contrast, fewer than half the individuals who were previously arrested on two separate occasions with those charges still pending successfully completed their pretrial release period without another arrest.

Members recommended exploring the release and detention rates of repeat offenders, individuals charged with auto theft or Graves Act weapons offenses, and people facing domestic violence charges. Rather than revert to more pretrial detention, stakeholders advocated for therapeutic treatment and related resources to address the root causes of criminal behavior, further examination of electronic monitoring as an alternative to pretrial detention, and new strategies to involve law enforcement in pretrial monitoring.

In addition, stakeholders requested deeper review of the factors associated with the high rate of people of color in county jails.

- Black people constitute 15.2% of the New Jersey population yet represent more than half of its jail population.

Accordingly, the Committee pushed to review and enhance the Public Safety Assessment (PSA) in order to eliminate race-related disparity to the extent possible.

➤ The Future: Committee Process and Summary of Recommendations

To address the complex and interrelated issues involved in CJR, the members of the reconvened Joint Committee divided into three subcommittees: (1) Pretrial Process, (2) Pretrial Services, and (3) Data Analysis. To inform its work, the Committee received and reviewed data compiled by the Administrative Office of the Courts (AOC) regarding the changes resulting from the initial CJR reforms.

Each subcommittee independently focused on the challenges associated with the small number of defendants who cycle through the criminal justice system. On that point, the Committee highlighted the urgent need to invest resources in those defendants to interrupt the cycle, rather than simply increasing detention. In addition, each subcommittee also focused on the high turnover of personnel throughout the criminal justice system -- law enforcement officers, prosecutors, defense attorneys, and judges -- and proposed system-wide training on an ongoing basis to ensure the system functions as intended.

Against that backdrop, the Joint Committee endorsed a series of recommendations, which are summarized as follows:

- The Legislative and Executive Branches should provide funding for statewide resources to support defendants on pretrial release, with a focus on offering repeat offenders the opportunity to engage in treatment in lieu of revocation of release.
- The Criminal Justice Reform Act should be modified to make clear that, for defendants in custody, the process and time frames for motions to revoke release mirror the procedures for detention motions.
- The Act should be amended (1) to require pretrial services to make a recommendation to revoke release for eligible defendants who had two or more prior arrests, with charges still pending, when they were arrested for a new offense, and (2) to provide that this recommendation may be used as prima facie evidence to overcome the presumption of release.

- Stakeholders should coordinate efforts to provide additional and ongoing training about Criminal Justice Reform to law enforcement officers, prosecutors, judges, and defense attorneys.
- Additional funding should be provided to ensure that the Judiciary has sufficient staff to monitor the high volume of people currently on pretrial release.
- The Judiciary should take steps to resolve the oldest pending criminal and municipal disorderly persons cases in order to reduce the number of people currently on pretrial release to pre-pandemic levels.
- The Judiciary should engage in continued, comprehensive research, utilizing New Jersey data, to improve both the predictive accuracy of the PSA and minimize racial disparities.

➤ Conclusion

Nearly a decade ago, stakeholders in New Jersey came together to recommend and then implement CJR reforms. Today, that same broad engagement and collaboration is necessary to sustain the strengths of the current system and integrate further improvements. In that spirit of collaboration, and informed by the extensive data compiled since 2017, the diverse members of the Joint Committee here offer recommendations to further advance CJR in New Jersey.

I. Subcommittee on Pretrial Process

TRAINING & RESOURCES: SUMMONS/WARRANT PHASE

RECOMMENDATION 1:

- The Attorney General, County Prosecutors Association, Chiefs of Police Association, and Judiciary should coordinate efforts to ensure additional and ongoing training for law enforcement officers.
- Such training should include an overview of Criminal Justice Reform; the Attorney General Directive related to a summons / warrant decision; information provided within a Preliminary PSA; completion of the PLEIR, Affidavit of Probable Cause and ODARA; the need to timely transmit all discovery and police reports to the County Prosecutor for first appearance, detention, and revocation hearings; new statutory provisions for charging contempt of court for violations of home detention and electronic monitoring; and requesting a complaint-warrant in the electronic complaint system (eCDR) system.

RECOMMENDATION 2:

- The Attorney General should update its quick reference guide for law enforcement to use when making a summons / warrant decision.
- The Judiciary should enhance its eCDR so that officers can easily access the guide.

RECOMMENDATION 3:

- The Attorney General should examine statewide usage of the Preliminary Law Enforcement Investigation Report (PLEIR) that is submitted with a complaint. Content modifications should be considered to assist law enforcement officers when seeking a complaint-warrant.
- The Judiciary should seek to enhance its electronic complaint system (eCDR) to further automate completion of the PLEIR.

RECOMMENDATION 4:

- The Attorney General should continue to review the issue of repeated shoplifting, the use of the current charging statutes, and the use of citizen complaints to charge shoplifting, and, in collaboration with the County Prosecutors Association, incorporate those findings into future trainings for law enforcement.

RECOMMENDATION 5:

- The Judiciary should seek to modify its eCDR system so that a Preliminary PSA is automatically generated for law enforcement once a defendant has been fingerprinted and a complaint initiated.

RECOMMENDATION 6:

- The Judiciary should partner with the Attorney General and the New Jersey State Police to provide law enforcement officers more comprehensive out-of-state conviction information within the Preliminary PSA packet.

RECOMMENDATION 7:

- The Judiciary should seek to reorganize the content in the PSA packet to make it more readable and understandable for law enforcement and other stakeholders.
- The Judiciary, in collaboration with the Attorney General, should review the recommendations to law enforcement that appear on the Preliminary PSA to make such recommendations more understandable.

RECOMMENDATION 8:

- The Judiciary should provide additional and ongoing training to judicial officers who consider requests from law enforcement to issue a complaint-warrant.
- Such training should include an overview of Criminal Justice Reform, Rules of Court, and policies related to the issuance of summonses and warrants, and a review of annual data.

TRAINING & RESOURCES: MOTIONS FOR DETENTION
& REVOCATION OF RELEASE

RECOMMENDATION 9:

- The Attorney General and County Prosecutors Association should partner to provide additional and ongoing training for prosecutors.
- Such training should include an overview of Criminal Justice Reform, applicable Attorney General Directives and Rules of Court, the pretrial process, motions for detention and revocation of release, and the obligation to produce discovery within the timeframes for a detention or revocation hearing.

RECOMMENDATION 10:

- The Judiciary should provide additional and ongoing training to judges making release, detention, and revocation of release decisions.
- Such training should include an overview of Criminal Justice Reform and the pretrial process; applicable Rules of Court and administrative policies; conditions of release; legal standards for detention and revocation of release; legal standards for the adjournment of a detention or revocation hearing; and a review of annual data.

RECOMMENDATION 11:

- The Judiciary should review policies and procedures related to pretrial monitoring to allow pretrial services to recommend, for eligible defendants who have remained compliant for at least six (6) months, a reduction of conditions or monitoring level.
- Such procedures should include notice to the parties and an opportunity to be heard regarding any adjustments to a pretrial defendant's conditions or monitoring level.

II. Subcommittee on Pretrial Services

PRETRIAL SERVICES STAFFING

RECOMMENDATION 12:

- Additional funding should be provided to enable the Judiciary to increase Pretrial Services staffing in order to ensure appropriate oversight of the large volume of defendants currently on pretrial release.
- The additional funding should remain in place until the number of defendants on pretrial release returns to pre-pandemic levels.

RECOMMENDATION 13:

- Judiciary Pretrial Services staff should conduct a basic needs assessment for every eligible defendant who has been ordered released.
- Staff should be trained to emphasize that referrals made as a result of the assessment would be voluntary.

INCREASED CONNECTIONS TO RESOURCES

RECOMMENDATION 14:

- Judiciary Pretrial Services staff should use all available resources to assist defendants -- whether through state, county, or non-profit entities -- and provide a list of available resources directly to defendants.
- In high volume counties, specific staff should be designated to liaison with local providers and directly connect defendants to such resources.

RECOMMENDATION 15:

- The Legislature should consider providing an opportunity for each County to establish a "Pretrial Coordinator," who would work to connect those on pretrial release to programs and services in the County. A model for such a program could be the Fair Release and Reentry Act, which was amended in

2021 to provide grant funding to counties to establish a “Reentry Coordinator” for those being released after a sentence of incarceration. The legislation should make clear that each county is permitted, where applicable, to use its current Reentry Coordinator to assist individuals on pretrial release, or hire additional staff to work as a Pretrial Coordinator.

RECOMMENDATION 16:

- Following New Jersey’s successful Recovery Court model, the Department of Human Services should receive additional funding to provide services for defendants on pretrial release.

RECOMMENDATION 17:

- For defendants who have been on pretrial release more than six (6) months, or upon indictment, Judiciary staff should screen their case(s) to determine whether they may be eligible for Recovery Court in the future.
- Such defendants should be offered the opportunity to, on a voluntary basis, begin treatment for substance use disorder while on pretrial release.

PRETRIAL MONITORING

RECOMMENDATION 18:

- The Attorney General should review Directives related to Criminal Justice Reform and consider modifications to (1) include cases charging contempt of an order for home detention or electronic monitoring among the cases for which law enforcement must apply for a complaint-warrant, and (2) include such cases among the cases for which the prosecutor is presumed to seek detention or revocation of release.

RECOMMENDATION 19:

- The Judiciary should review Rules of Court related to the issuance of summonses and warrants and consider amendments to make contempt of an order for no contact, or home detention or electronic monitoring a presumed warrant charge.

III. Subcommittee on Data Analysis

REPEAT OFFENDERS

RECOMMENDATION 20:

- For an eligible defendant who has been detained or has had their release revoked, and who has more than one case pending in Superior Court, the court should schedule a case management conference within 60 days of the order detaining the defendant or revoking the defendant's release.
- At the conference, the prosecutor and defendant's attorney should be prepared to discuss all pending cases, including disorderly persons cases issued on a complaint-warrant, and update the court as to the progress of plea negotiations.

RECOMMENDATION 21:

- For an eligible defendant who has more than one case pending in Superior Court, upon the joint request of the parties, when they have indicated they are prepared to discuss a resolution of all pending matters, the court should schedule a case management conference.
- At the conference, the prosecutor and defendant's attorney should be prepared to discuss all pending cases, including disorderly persons cases issued on a complaint-warrant, and update the court as to the progress of plea negotiations.

RECOMMENDATION 22:

- The Legislature should consider amending the Criminal Justice Reform Act to clarify that it allows for the temporary detention of an eligible defendant when a prosecutor has filed a motion for revocation of release and the defendant is in custody. The process and timelines should be similar to those for motions for detention.

RECOMMENDATION 23:

- The Legislature should consider amending the Criminal Justice Reform Act to require pretrial services to make a recommendation to revoke release for an eligible defendant who has been charged with a new offense on a complaint-warrant and who, at the time of the current offense, had previously been arrested on two separate occasions, and those charges were still pending at the time of the current offense. The Act should further provide that such recommendation by pretrial services may be used as prima facie evidence to overcome the presumption of release.
- The above requirement should apply if the current offense or at least one of the pending charges is for an indictable offense or a disorderly persons offense where domestic violence is indicated.

RECOMMENDATION 24:

- The Legislature should consider amending the Criminal Justice Reform Act to grant the court the discretion to permit a defendant whose release has been revoked to voluntarily accept an offer for release on conditions that include attendance and completion of drug, alcohol, or mental health treatment at an approved program or facility when and to the extent clinically indicated.

AUTO THEFT

RECOMMENDATION 25:

- The Attorney General should review Directives related to Criminal Justice Reform and consider modifications to (1) include automobile theft cases among the cases for which law enforcement must apply for a complaint-warrant, and (2) include cases involving repeat automobile theft charges among the cases for which the prosecutor is presumed to seek detention or revocation of release.

RECOMMENDATION 26:

- The Judiciary should review Rules of Court related to the issuance of summonses and warrants and consider amendments to make automobile theft a presumed warrant charge.

DOMESTIC VIOLENCE

RECOMMENDATION 27:

- The Attorney General and County Prosecutors Association should partner to ensure that law enforcement officers and prosecutors receive additional and ongoing training regarding charges for strangulation of a domestic violence victim, and the resources available to provide victims support during the pendency of a criminal or domestic violence case.

RECOMMENDATION 28:

- The Legislature should take action to require standards for abusive partner intervention domestic violence programs.
- Resources should be allocated to make such programs available for individuals on pretrial release.

RECOMMENDATION 29:

- The Legislature should take action to provide for representation by the Office of the Public Defender in domestic violence related CJR cases that are within the jurisdiction of the Superior Court, Family Division.
- Appropriate funding must be included to properly implement this new role.

RECOMMENDATION 30:

- The Judiciary should continue to engage in research, using New Jersey court data, to determine whether improvements can be made regarding the predictive accuracy of the PSA.
- Areas of examination should include the use of temporary restraining order or other domestic violence data; the use of age as a factor; limiting failures to appear to within a certain period of time; limiting disorderly persons convictions to within a certain period of time; and limiting indictable convictions to within a certain period of time.

RESEARCH ON DISPARITY CONCERNS

RECOMMENDATION 31:

- The Judiciary should engage in continued, comprehensive research, utilizing New Jersey data, to improve both the predictive accuracy of the PSA and minimize any racial disparities.

REPORT OF THE PRETRIAL PROCESS **SUBCOMMITTEE**

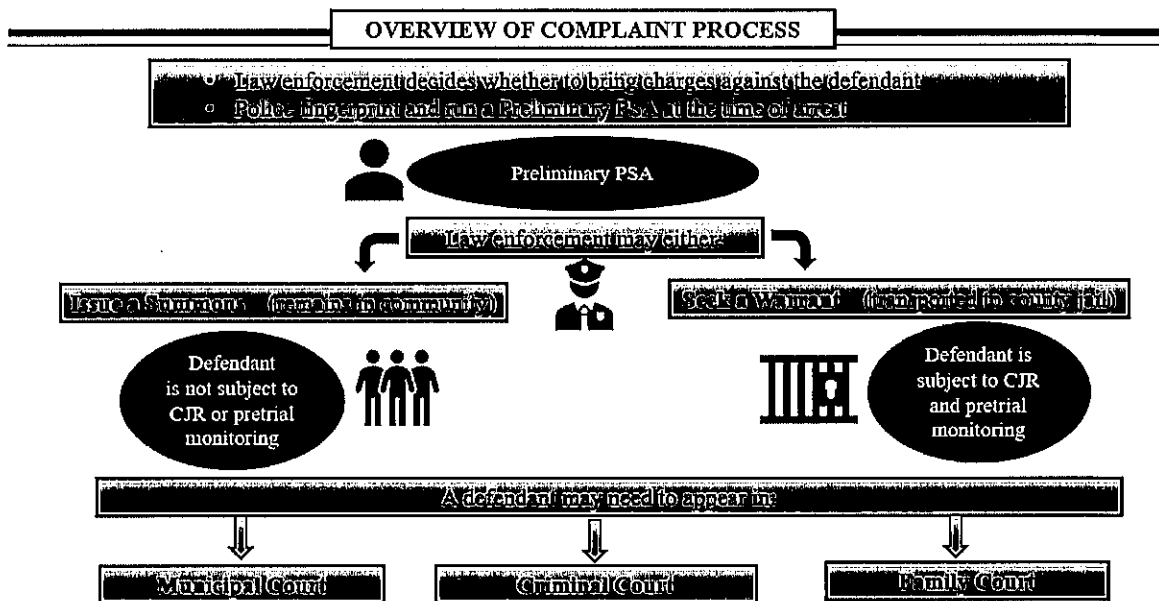
The Criminal Justice Reform Act (CJRA) establishes pathways from the point of arrest to a defendant's eventual release or detention during the pretrial period. The Pretrial Process Subcommittee examined each phase of that pretrial process in sequence: (1) the law enforcement decision to charge on a complaint-summons or apply for a complaint-warrant; (2) the prosecutor's decision to file a motion for pretrial detention, and the judicial determination as to detention; and (3) the prosecutor's decision to apply to revoke release, and the judicial determination as to revocation.

At each phase, data show notable differences at the county level, which may not be fully explained by variations in crime patterns. Accordingly, to support consistent implementation of CJR protocols -- and thereby ensure comparable treatment of similarly situated defendants throughout New Jersey -- the Subcommittee recommends ongoing training for law enforcement, prosecutors, judicial officers, judges, and defense attorneys. In conjunction with such training, the Subcommittee recommends refinement of certain Attorney General and Judiciary CJR resources, including directives and technology.

1. Summons / Warrant Decision

Fig. 1

Process Flow of the Complaint Issuance Process



When a defendant is arrested, the CJRA provides that a law enforcement officer can issue charges on a complaint-summons, or request that a judicial officer issue a complaint-warrant. If a complaint-summons is issued, law enforcement immediately releases the defendant with a court date. If a complaint-warrant is issued, law enforcement temporarily detains and transports the defendant to the county jail, Pretrial Services staff prepare a risk assessment, and a judge decides whether the “eligible defendant” can be safely released on conditions⁴ pending trial.

CJR relies on consistent charging decisions by law enforcement officers to ensure that individuals who are charged with more serious offenses, or who pose

⁴ N.J.S.A. 2A:162-15 et seq.

heightened risks to public safety, are evaluated by a judicial officer and either detained or released with appropriate conditions.

- *Law Enforcement Guidance*

Attorney General Directives guide a law enforcement officer's decision to issue a complaint-summons or request a complaint-warrant.⁵ Those directives instruct officers to consider the nature of the current charge and fingerprint the defendant in order to run a Preliminary Public Safety Assessment (Preliminary PSA).⁶

In deciding whether to request a complaint-warrant, a law enforcement officer considers the Preliminary PSA and a number of other factors, including but not limited to the defendant's Ontario Domestic Assault Risk Assessment (ODARA) score; domestic violence history; juvenile delinquency history; prior failure to appear; outstanding warrants; as well as whether the defendant has been charged with certain weapons-related offenses; and whether the defendant was on pretrial release when charged with the current offense.⁷ The officer then must complete both the Preliminary Law Enforcement Investigative Report (PLEIR) and the Affidavit of Probable Cause.

⁵ N.J.S.A. 2A:162-16c.

⁶ The Preliminary PSA is the initial computer-generated assessment available to law enforcement officers and prosecutors considering whether to charge on a summons or warrant. A final version of the PSA is produced for the judge, prosecutor and defense attorney at the defendant's first appearance.

⁷ Attorney General Law Enforcement Directive 2016-6, v.3.0, Modification of Directive Establishing Interim Policies, Practices, and Procedures to Implement Criminal Justice Reform Pursuant to P.L. 2015, c. 31, § 4, at pp. 28-54.

A law enforcement officer requesting a complaint-warrant speaks directly to a judicial officer, who will first determine probable cause and then decide whether to issue a complaint-warrant. The law enforcement officer can present relevant information beyond the Preliminary PSA, such as those factors set out in the Attorney General Directive.

- *Guidance for Judges and Judicial Officers*

Rule 3:3-1 and the Preliminary PSA inform the decision by a judicial officer as to whether to issue a complaint-warrant. Rule 3:3-1(e) requires issuance of a complaint-warrant “when a judicial officer finds pursuant to R. 3:3-1(a) that there is probable cause to believe that the defendant committed murder, aggravated manslaughter, manslaughter, aggravated sexual assault, sexual assault, robbery, carjacking, or escape, or attempted to commit any of the foregoing crimes, or where the defendant has been extradited from another state for the current charge.” Certain other serious and violent offenses also presumptively result in the issuance of a complaint-warrant pursuant to Rule 3:3-1(f). Those offenses include, but are not limited to, crimes involving the possession or use of a firearm, vehicular homicide, aggravated assault, disarming a law enforcement officer, kidnapping, aggravated arson, and burglary.

Finally, pursuant to Rule 3:3-1(d), a judicial officer can issue a complaint-warrant “when the judicial officer finds . . . that a complaint-warrant is needed to reasonably assure a defendant’s appearance in court when required, to protect the safety of any other person or the community, or to assure that the defendant will not obstruct or attempt to obstruct the criminal justice process.”

- *Variation in Complaint Type by County*

Statewide, complaint-summonses comprised 54.7% of the 76,734 complaints issued between January 1 and December 31, 2022. However, rates of summonses and warrants varied substantially from county to county. For example, in Atlantic and Sussex Counties, complaint-summonses constituted nearly 75% of all complaints, yet in Essex and Hudson complaint-summonses accounted for less than 40% of complaints.

Fig. 2

Complaint-Summonses and Complaint-Warrants Issued by County: January 1 – December 31, 2022

County	Total Defendants	Released on Summonses	Percent Released on Summonses	Issued Warrants and Committed to Jail	Percent Issued Warrants
Atlantic	4,068	2,957	72.7%	1,111	27.3%
Bergen	4,479	2,967	66.2%	1,512	33.8%
Burlington	3,584	2,263	63.1%	1,321	36.9%
Camden	7,867	4,374	55.6%	3,493	44.4%
Cape May	1,246	753	60.4%	493	39.6%
Cumberland	3,175	2,142	67.5%	1,033	32.5%
Essex	9,084	3,155	34.7%	5,929	65.3%
Gloucester	2,919	1,899	65.1%	1,020	34.9%
Hudson	6,313	2,430	38.5%	3,883	61.5%
Hunterdon	642	428	66.7%	214	33.3%
Mercer	4,498	1,970	43.8%	2,528	56.2%
Middlesex	5,482	3,364	61.4%	2,118	38.6%
Monmouth	4,551	2,834	62.3%	1,717	37.7%
Morris	1,844	1,254	68.0%	590	32.0%
Ocean	4,300	2,428	56.5%	1,872	43.5%
Passaic	5,050	2,219	43.9%	2,831	56.1%
Salem	891	582	65.3%	309	34.7%
Somerset	1,176	530	45.1%	646	54.9%
Sussex	686	506	73.8%	180	26.2%
Union	4,079	2,511	61.6%	1,568	38.4%
Warren	800	390	48.8%	410	51.3%
State	76,734	41,956	54.7%	34,778	45.3%

Differing crime patterns throughout the state may partly explain the variations among counties in issuing complaints. However, fingerprinting rates have declined over time, which suggests a reduced use of the Preliminary PSA. To the extent that crime patterns remain consistent, the change in charging practices could indicate inconsistent adherence to Attorney General Directives.

24x

Fig. 3

Statewide LiveScan Fingerprinting Rates

	Summonses	Warrants	Total
December 2017	91.6%	95.0%	92.7%
December 2018	93.4%	96.0%	94.2%
December 2019	91.5%	96.5%	93.0%
December 2020	88.1%	95.6%	90.7%
December 2021	87.0%	95.6%	90.8%
December 2022	88.2%	93.4%	90.5%

Other factors might contribute to a reduction in charges by complaint-warrant in particular counties. Those factors could include misunderstandings about parts of the Attorney General’s Directive, processes within the electronic Complaint Disposition Reporting (eCDR) system, and applicable Court Rules.

- ***Subcommittee Considerations***

The Subcommittee focused on the high rate of turnover of personnel in several areas, including law enforcement, prosecutors, judicial officers, judges, and defense attorneys. In addition, the Subcommittee acknowledged the demands on law enforcement officers, including the time required to process complaints and complete the PLEIR and the Affidavit of Probable Cause, the requirement to recall numerous factors set out in the AG Directive and the Preliminary PSA, and the challenges of communicating essential information to a judicial officer when requesting a complaint-warrant. The Subcommittee also discussed concerns associated with quality-of-life offenses, such as shoplifting, and the benefit of focused training on those matters.

- *Subcommittee Recommendations -- Summons/Warrant Phase*

To support law enforcement, prosecutors, judicial officers, judges, and defense attorneys in understanding and adhering to CJR pretrial processes, the Subcommittee recommends ongoing training, refinements to written guidance, and expanded use of technology, as follows:

LAW ENFORCEMENT TRAINING & RESOURCES

RECOMMENDATION 1:

- The Attorney General, County Prosecutors Association, Chiefs of Police Association, and Judiciary should coordinate efforts to ensure additional and ongoing training for law enforcement officers.
- Such training should include an overview of Criminal Justice Reform; the Attorney General Directive related to a summons / warrant decision; information provided within a Preliminary PSA; completion of the PLEIR, Affidavit of Probable Cause and ODARA; the need to timely transmit all discovery and police reports to the County Prosecutor for first appearance, detention, and revocation hearings; new statutory provisions for charging contempt of court for violations of home detention and electronic monitoring; and requesting a complaint-warrant in the electronic complaint system (eCDR) system.

RECOMMENDATION 2:

- The Attorney General should update its quick reference guide for law enforcement to use when making a summons / warrant decision.
- The Judiciary should enhance its eCDR so that officers can easily access the guide.

RECOMMENDATION 3:

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- The Judiciary should seek to enhance its eCDR to further automate completion of the PLEIR.

RECOMMENDATION 4:

- The Attorney General should continue to review the issue of repeated shoplifting, the use of the current charging statutes, and the use of citizen complaints to charge shoplifting, and, in collaboration with the County Prosecutors Association, incorporate those findings into future trainings for law enforcement.

JUDICIARY TRAINING & RESOURCES

RECOMMENDATION 5:

- The Judiciary should seek to modify its eCDR system so that a Preliminary PSA is automatically generated for law enforcement once a defendant has been fingerprinted and a complaint initiated.

RECOMMENDATION 6:

- The Judiciary should partner with the Attorney General and the New Jersey State Police to provide law enforcement officers more comprehensive out-of-state conviction information within the Preliminary PSA packet.

RECOMMENDATION 7:

- The Judiciary should seek to reorganize the content in the PSA packet to make it more readable and understandable for law enforcement and other stakeholders.

- The Judiciary, in collaboration with the Attorney General, should review the recommendations to law enforcement that appear on the Preliminary PSA to make such recommendations more understandable.

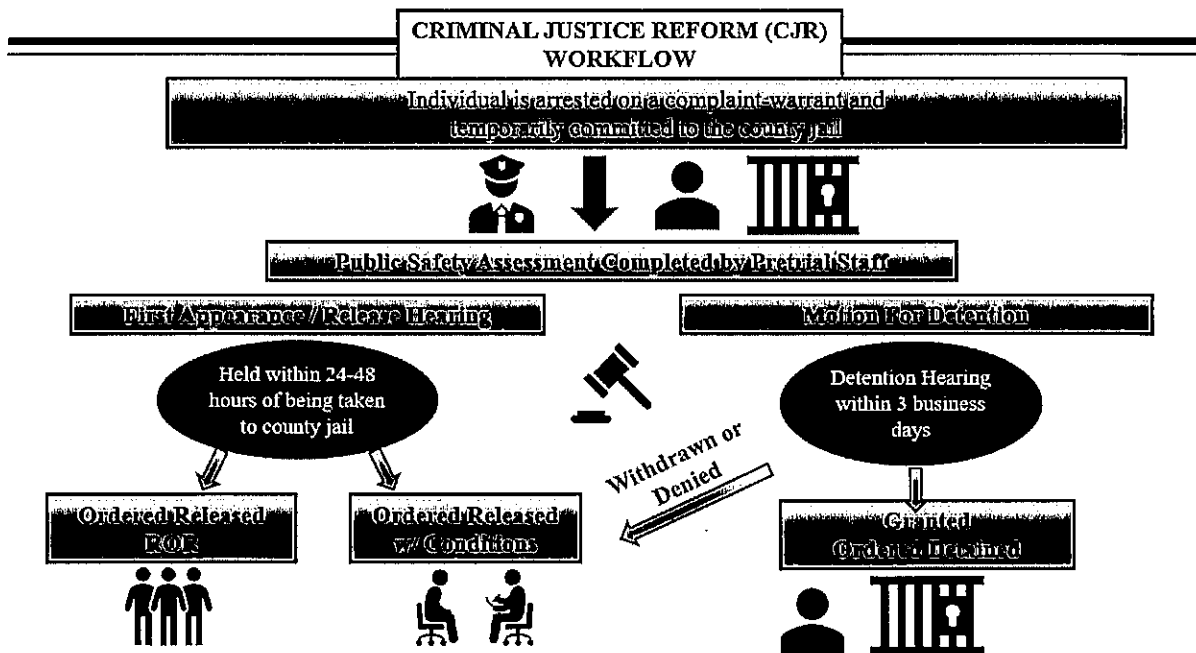
RECOMMENDATION 8:

- The Judiciary should provide additional and ongoing training to judicial officers who consider requests from law enforcement to issue a complaint-warrant.
- Such training should include an overview of Criminal Justice Reform, Rules of Court, and policies related to the issuance of summonses and warrants, and a review of annual data.

2. Motions for Detention

Fig. 4

Process Flow for Criminal Justice Eligible Defendants on Complaint-Warrants



28x

Appropriate standards for seeking detention -- and consistency in judicial determinations to grant or deny detention motions -- promote both fairness for criminal defendants and safety for New Jersey communities.

For CJR eligible defendants, Pretrial Services must conduct a pretrial risk assessment, and the court must make a release decision, within 48 hours of a defendant's commitment to the jail, unless a prosecutor files a motion for detention pending trial.⁸

An eligible defendant charged with an indictable offense or a disorderly persons offense that involves domestic violence may be detained when a prosecutor files a motion for detention and a judge makes certain findings. An eligible defendant cannot be detained on a disorderly persons offense that does not involve domestic violence.⁹

A judge can only detain an individual upon a finding that no combination of monetary or non-monetary release conditions would reasonably assure the defendant's appearance in court, protect public safety, and ensure that the defendant will not obstruct the criminal justice process.¹⁰ Charges that involve murder or subject a defendant to an ordinary or extended term of life imprisonment, carry a

⁸ N.J.S.A. 2A:162-16b(1).

⁹ N.J.S.A. 2A:162-18a(1).

¹⁰ Ibid.

presumption of detention.¹¹ A presumption of release applies in all other circumstances.¹²

- ***Information Considered Regarding Detention***

Prosecutors have access to the PSA, court history, out-of-state charges, and supplemental court information, including domestic violence restraining orders and juvenile history, when deciding whether to file or withdraw a motion for detention. Defense attorneys also have this information when arguing for release. Judges consider the same information to decide whether to grant or deny a motion for detention.¹³

- ***Prosecutor Filing & Withdrawal of Detention Motions***

In 2022, prosecutors filed detention motions for 14,973 (43.1%) defendants on complaint-warrants. Prosecutors withdrew, or judges dismissed at the request of the State, 2,672 (17.8%) of those detention motions. Judges decided 12,301 (82.2%) of detention motions.

¹¹ N.J.S.A. 2A:162-18b.

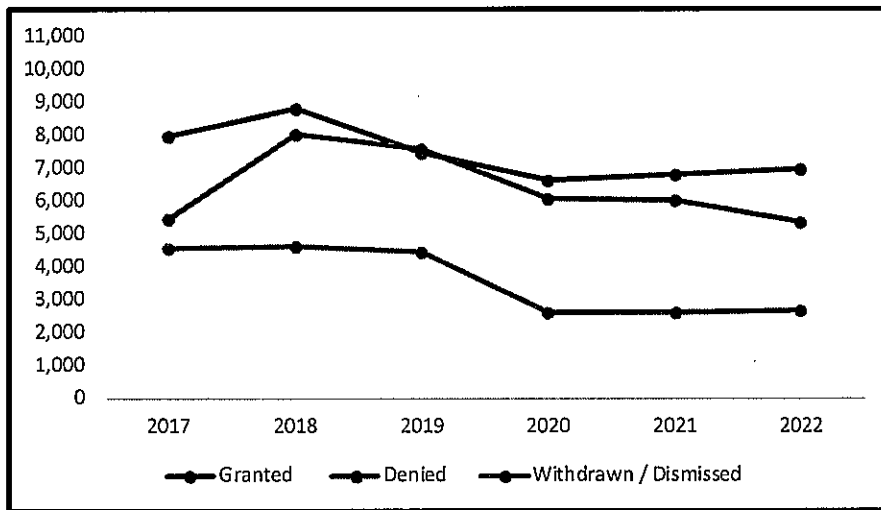
¹² As amended in 2022, the CJRA provides that pretrial services must recommend no release for defendants charged with most crimes involving a firearm that would be subject to a mandatory term of imprisonment pursuant to the Graves Act. That recommendation of no release may be used as prima facie evidence to overcome the presumption of release. N.J.S.A. 2A:162-20f and 2A:162-19g. See the Report of the Subcommittee on Data Analysis, pages 72-75, for further discussion of Graves Act considerations.

¹³ The PSA and the recommendation from Pretrial Services inform the judicial decision-making process but do not control the decision whether to order detention.

Fig. 5

Detention Motions for Criminal Justice Reform Eligible Defendants on Complaint-Warrants

	2017	2018	2019	2020	2021	2022
Total motions filed	17,981	21,422	19,487	15,267	15,439	14,973
Motions withdrawn / dismissed	4,540	4,613	4,454	2,616	2,613	2,672
Motions decided by judges	13,441	16,809	15,033	12,651	12,826	12,301
Motions granted	7,974	8,797	7,456	6,604	6,817	6,966
Motions denied	5,467	8,012	7,577	6,047	6,009	5,335

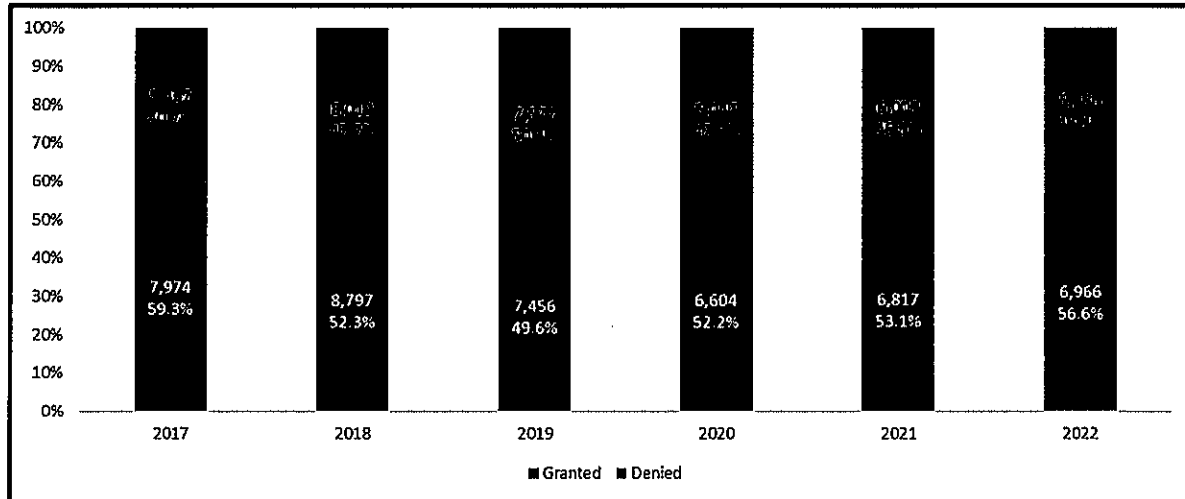


- ***Judicial Decisions to Grant or Deny Pretrial Detention Motions***

Since 2017, judges have granted 49.6% to 59.3% of detention motions decided after a hearing. In response to prosecutors’ motions, judges detained 6,604 to 8,797 defendants per year.

Fig. 6

Detention Motions Decided by a Judge



- *Variation in Detention Motions & Outcomes*

CJR calls for preventive detention of the most dangerous individuals. Although discretion afforded to prosecutors and judges is critical to the CJR model, the Subcommittee recommends additional education and training for prosecutors, defense attorneys, and judges to address county-level variation in the rates of detention motions filed, withdrawn, granted, and denied.

The table below describes results for defendants issued complaint-warrants in 2022. It includes defendants whose case was addressed prior to the release decision, those who did not have a detention motion filed and were ordered released after a first appearance hearing, and those who had a detention motion filed.¹⁴ Statewide, 53.4% of defendants on complaint-warrants were released after a first appearance hearing; no detention motion was filed in those cases. Conversely, 43.1% of defendants on complaint-warrants had a detention motion filed. Those results,

¹⁴ Pending motions are not reflected in this table.

however, varied by county. In some counties (Atlantic, Cape May, Salem), prosecutors filed a detention motion for more than 75% of eligible defendants; in other counties (Bergen, Essex, Hudson, Monmouth), prosecutors applied for detention for less than 40% of eligible defendants.

Fig. 7

Defendants Issued Complaint-Warrants: January 1 – December 31, 2022

County	Defendants Issued Warrants and Committed to Jail	Defendants Addressed prior to Release Decision	Percent Addressed prior to Release	Defendants Released - no Detention Motion Filed	Percent no Detention Motion Filed	Defendants held in Jail - Detention Motion Filed	Percent Detention Motion Filed
Atlantic	1,111	28	2.5%	166	14.9%	911	82.0%
Bergen	1,512	32	2.1%	880	58.2%	599	39.6%
Burlington	1,321	26	2.0%	585	44.3%	710	53.7%
Camden	3,493	93	2.7%	1,778	50.9%	1,621	46.4%
Cape May	493	17	3.4%	109	22.1%	366	74.2%
Cumberland	1,033	41	4.0%	162	15.7%	826	80.0%
Essex	5,929	412	6.9%	3,591	60.6%	1,896	32.0%
Gloucester	1,020	15	1.5%	420	41.2%	584	57.3%
Hudson	3,883	98	2.5%	2,552	65.7%	1,215	31.3%
Hunterdon	214	5	2.3%	115	53.7%	94	43.9%
Mercer	2,528	72	2.8%	1,691	66.9%	755	29.9%
Middlesex	2,118	90	4.2%	1,143	54.0%	865	40.8%
Monmouth	1,717	25	1.5%	1,020	59.4%	660	38.4%
Morris	590	25	4.2%	252	42.7%	306	51.9%
Ocean	1,872	16	0.9%	921	49.2%	935	49.9%
Passaic	2,831	47	1.7%	1,779	62.8%	995	35.1%
Salem	309	11	3.6%	17	5.5%	281	90.9%
Somerset	646	9	1.4%	334	51.7%	303	46.9%
Sussex	180	4	2.2%	90	50.0%	86	47.8%
Union	1,568	22	1.4%	788	50.3%	754	48.1%
Warren	410	3	0.7%	193	47.1%	211	51.5%
State	34,778	1,091	3.1%	18,586	53.4%	14,973	43.1%

In 2022, prosecutors statewide withdrew 2,631 (17.6%) of 14,973 detention motions. As reflected in the following table, prosecutors withdrew detention motions at different rates, ranging from a low of 2.7% in Atlantic County to a high of 49.3% in Warren County.

Judicial determinations likewise varied by county in 2022. Of the total motions filed, judges ordered detention in more than 60% of cases in Passaic County, as compared to only 25% of cases in Ocean County.

Fig. 8

Detention Motion Results by County: January 1 – December 31, 2022

County	Total Detention Motions Filed	Released - Detention Motion Withdrawn	Percent of Detention Motions Filed	Released - Detention Motion Dismissed	Percent of Detention Motions Filed	Released - Detention Motion Denied	Percent of Detention Motions Filed	Detained - Detention Motion Granted	Percent of Detention Motions Filed
Atlantic	911	25	2.7%	2	0.2%	330	36.2%	554	60.8%
Bergen	599	168	28.0%	2	0.3%	128	21.4%	301	50.3%
Burlington	710	113	15.9%	5	0.7%	250	36.6%	332	46.8%
Camden	1,621	598	36.9%	0	0.0%	421	26.0%	602	37.1%
Cape May	366	21	5.7%	4	1.1%	142	38.8%	199	54.4%
Cumberland	826	56	6.8%	0	0.0%	415	50.2%	355	43.0%
Essex	1,896	300	15.8%	3	0.2%	617	32.5%	976	51.5%
Gloucester	584	174	29.8%	0	0.0%	211	36.1%	199	34.1%
Hudson	1,215	71	5.8%	5	0.4%	611	50.3%	528	43.5%
Hunterdon	94	41	43.6%	0	0.0%	14	14.9%	39	41.5%
Mercer	755	248	32.8%	0	0.0%	197	26.1%	310	41.1%
Middlesex	865	306	35.4%	7	0.8%	167	19.3%	385	44.5%
Monmouth	660	61	9.2%	0	0.0%	274	41.5%	325	49.2%
Morris	306	51	16.7%	10	3.3%	66	21.6%	179	58.5%
Ocean	935	99	10.6%	0	0.0%	602	64.4%	234	25.0%
Passaic	995	35	3.5%	1	0.1%	323	32.5%	636	63.9%
Salem	281	43	15.3%	0	0.0%	138	49.1%	100	35.6%
Somerset	303	19	6.3%	0	0.0%	157	51.8%	127	41.9%
Sussex	86	12	14.0%	0	0.0%	19	22.1%	55	64.0%
Union	754	86	11.4%	2	0.3%	206	27.3%	460	61.0%
Warren	211	104	49.3%	0	0.0%	37	17.5%	70	33.2%
State	14,973	2,631	17.6%	41	0.3%	5,335	35.6%	6,966	46.5%

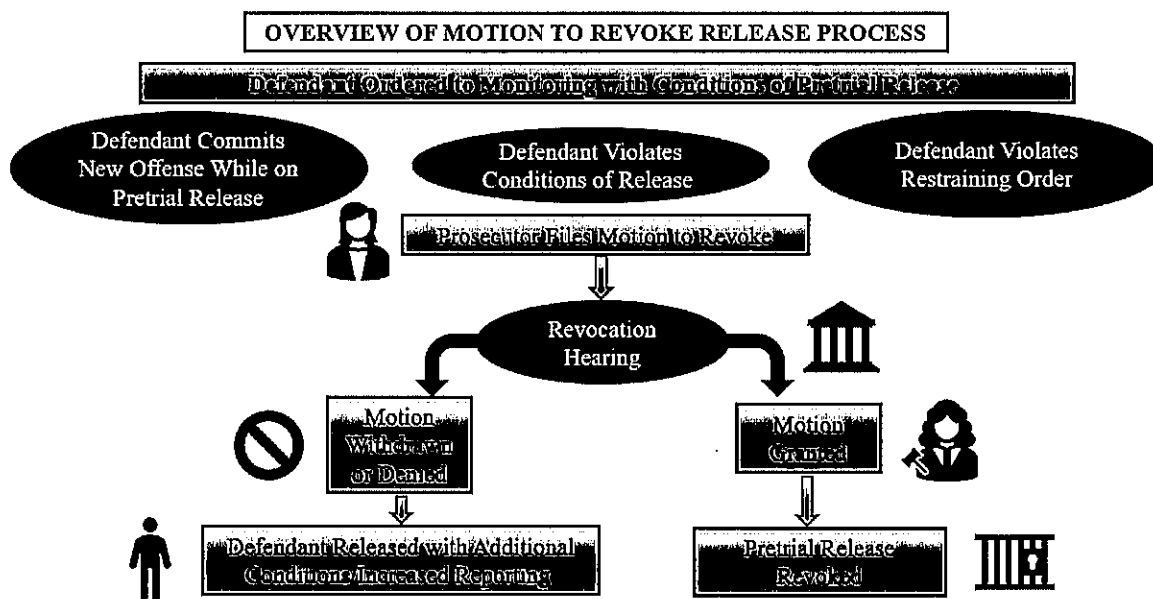
Some variation may result from crime patterns by county, case volumes, and law enforcement resources to address and investigate serious crimes as opposed to lesser offenses. Variations may also arise from inconsistent understanding of the CJRA, Attorney General Directives, and Rules of Court.

34x

3. Motions for Revocation of Release

Fig. 9

Process Flow for Motions to Revoke Release



A prosecutor may make a motion to revoke release (1) when there is reason to believe that an eligible defendant on pretrial release has violated a restraining order or a condition of release, or (2) based on a finding of probable cause that the defendant has committed a new crime.¹⁵ However, unlike a detention motion, the CJRA does not provide for the temporary detention of a defendant pending a motion to revoke release. Nor does the statute establish timeframes or presumptions for a revocation motion.

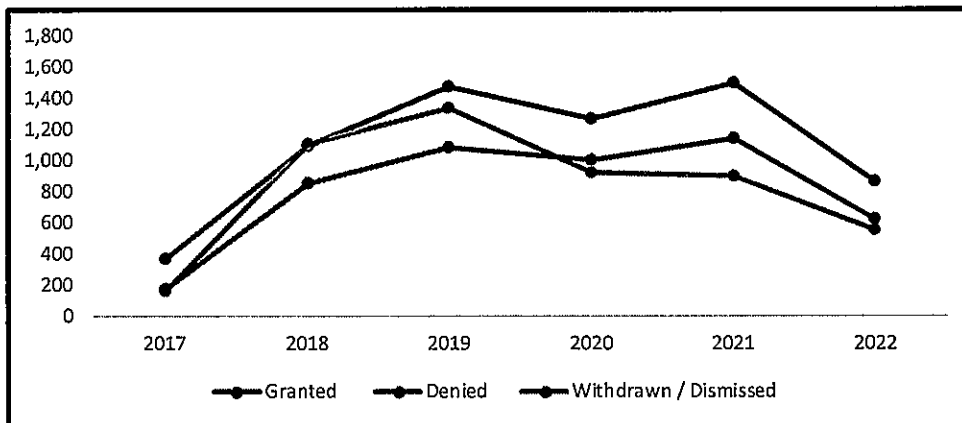
¹⁵ N.J.S.A. 2A:162-24(a).

The data demonstrate a reduction in the total number of motions to revoke release filed in 2022 as compared to nearly all prior years. Further, since 2017, prosecutors withdrew around 20% to 37% of motions to revoke release.

Fig. 10

Motions to Revoke Release

	2017	2018	2019	2020	2021	2022
Total motions filed	698	3,052	3,899	3,193	3,548	2,044
Motions withdrawn / dismissed	160	1,109	1,336	924	901	553
Motions decided by judges	538	1,943	2,563	2,269	2,647	1,491
Motions granted	366	1,094	1,478	1,266	1,504	863
Motions denied	172	849	1,085	1,003	1,143	628



• ***Variation in Revocation Motions***

The Subcommittee discussed factors that may contribute to current trends in motions to revoke release. Such motions could be used strategically in combination with, or in place of, motions for detention. For example, if a defendant was ordered released on their first case and rearrested for a second case while on pretrial release for the first case, the prosecutor may file a detention motion on the second case rather than a motion to revoke release on the first case. If so, the actual number of motions

36x

to revoke release may undercount the number of attempts to detain a defendant with repeated arrests.

Whether due to confusion, strategy, or underutilization of motions for revocation, the issue likely contributes to the delayed resolution of older cases for defendants detained after initially being released -- a significant concern in light of the increase in backlog of criminal cases.

- *Subcommittee Recommendations – Detention & Revocation of Release*

To support consistent and appropriate practices for pretrial detention and revocation of release, the Subcommittee recommends training for all participants.

LAW ENFORCEMENT TRAINING

RECOMMENDATION 9:

- The Attorney General and County Prosecutors Association should partner to provide additional and ongoing training for prosecutors.
- Such training should include an overview of Criminal Justice Reform, applicable Attorney General Directives and Rules of Court, the pretrial process, motions for detention and revocation of release, and the obligation to produce discovery within the timeframes for a detention or revocation hearing.

JUDICIARY TRAINING

RECOMMENDATION 10:

- The Judiciary should provide additional and ongoing training to judges making release, detention, and revocation of release decisions.

- Such training should include an overview of Criminal Justice Reform and the pretrial process; applicable Rules of Court and administrative policies; conditions of release; legal standards for detention and revocation of release; legal standards for the adjournment of a detention or revocation hearing; and a review of annual data.

RECOMMENDATION 11:

- The Judiciary should review policies and procedures related to pretrial monitoring to allow pretrial services to recommend, for eligible defendants who have remained compliant for at least six (6) months, a reduction of conditions or monitoring level.
- Such procedures should include notice to the parties and an opportunity to be heard regarding any adjustments to a pretrial defendant's conditions or monitoring level.

REPORT OF THE PRETRIAL SERVICES SUBCOMMITTEE

In its September 2019 report, the Pretrial Services Program Review Commission recommended (1) more staffing for the Pretrial Services Program and (2) expanded referrals to mental health and addiction treatment resources for defendants released pending trial.¹⁶ The Pretrial Services Subcommittee examined those same issues and reached the same recommendations. The Subcommittee also focused on the substantial increase in the pretrial release population due to delays in criminal dispositions caused by the Covid-19 pandemic and judicial vacancies. To uphold public safety, the Subcommittee further recommends that Attorney General Directives and Court Rules be revised to reflect recent changes in the law allowing for contempt charges for certain violations of pretrial release.

1. Defendants on Pretrial Release

Most individuals who are charged with criminal offenses pose little risk to public safety and can be safely released and provided reminders of court dates while their case is pending. However, other defendants require additional support to comply with conditions of release. A smaller subset of high-risk

¹⁶ “While the Pretrial Services Program is able to carry out its statutory duties with current staffing, the Commission acknowledges that increased staffing would allow the Pretrial Services Program to provide greater services to released defendants

The Commission strongly recommends that the Legislature and Governor find ways to increase the availability of services, specifically in the areas of mental health and addiction treatment. As a result of the implementation of criminal justice reform, the overall jail population for defendants held pre-disposition has decreased. Some of these individuals would benefit from referrals to these services.” (at p.6)

defendants who require home detention, with or without electronic monitoring, must be closely monitored, with immediate and focused responses when there is an alleged violation of pretrial conditions.

- *Pretrial Release Population vs. Pretrial Services Staffing*

From January 2020 to February 2023, the number of defendants on pretrial monitoring in New Jersey increased by 58.3%, from just under 30,000 to more than 46,000 people. Increases vary widely by county, with pretrial staff in some areas managing caseloads that have doubled in that time period.

Fig. 11

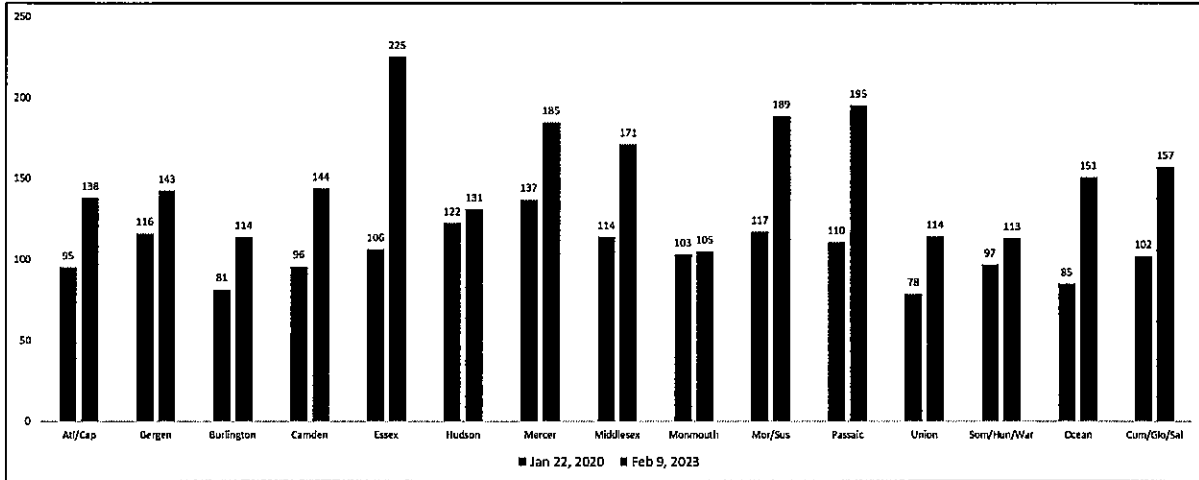
Defendants on PTM and Pretrial Authorized Positions in January 2020 and February 2023

	Total Defendants on PTM			Authorized Positions			Defendants per Authorized Positions		
	Jan 22, 2020	Feb 9, 2023	Percent	Jan 16, 2020	Feb 14, 2023	Percent	Jan 2020	Feb 2023	Percent
			Change			Change			Change
Atl/Cap	1,045	1,657	58.6%	11	15	36.4%	95	110	16.3%
Bergen	1,509	1,995	32.2%	15	15	0.0%	101	133	32.2%
Burlington	1,301	1,934	48.7%	16	17	6.3%	81	114	39.9%
Camden	3,250	4,891	50.5%	36	39	8.3%	90	125	38.9%
Essex	4,778	8,557	79.1%	47	55	17.0%	102	156	53.0%
Hudson	3,178	4,979	56.7%	34	46	35.3%	93	108	15.8%
Mercer	2,600	3,877	49.1%	24	33	37.5%	108	117	8.4%
Middlesex	2,160	3,081	42.6%	20	23	15.0%	108	134	24.0%
Monmouth	1,337	2,199	64.5%	18	25	38.9%	74	88	18.4%
Mor/Sus	818	943	15.3%	8	10	25.0%	102	94	-7.8%
Passaic	1,877	3,704	97.3%	18	35	94.4%	104	106	1.5%
Union	1,176	1,712	45.6%	15	20	33.3%	78	86	9.2%
Som/Hun/War	869	1,581	81.9%	10	15	50.0%	87	105	21.3%
Ocean	1,355	2,108	55.6%	17	22	29.4%	80	96	20.2%
Cum/Glo/Sal	1,934	2,983	54.2%	21	21	0.0%	92	142	54.2%
Total	29,187	46,201	58.3%	310	391	26.1%	94	118	25.5%

40x

Fig. 12

Defendants per Pretrial Services Staff



Despite the 58.3% increase in the number of defendants on pretrial release, the number of staff authorized for Pretrial Services has grown by only 26.1% -- from 310 in January 2020 to 391 in February 2023. In his April 2023 remarks to the Legislature as part of the budget process, the Administrative Director of the Courts requested funds beyond the \$22 million allotted to the Judiciary in order to meet basic staffing needs.

In light of the increase in defendants on pretrial release, including more defendants in need of services, the Subcommittee recommends an increase in Pretrial Services staffing along with additional responsibilities for those staff.

• *Subcommittee Recommendations -- Pretrial Services Staffing*

RECOMMENDATION 12:

- Additional funding should be provided to enable the Judiciary to increase Pretrial Services staffing in order to ensure appropriate oversight of the large volume of defendants currently on pretrial release.

- The additional funding should remain in place until the number of defendants on pretrial release returns to pre-pandemic levels.

RECOMMENDATION 13:

- Judiciary Pretrial Services staff should conduct a basic needs assessment¹⁷ for every eligible defendant who has been ordered released.
- Staff should be trained to emphasize that referrals made as a result of the assessment would be voluntary.

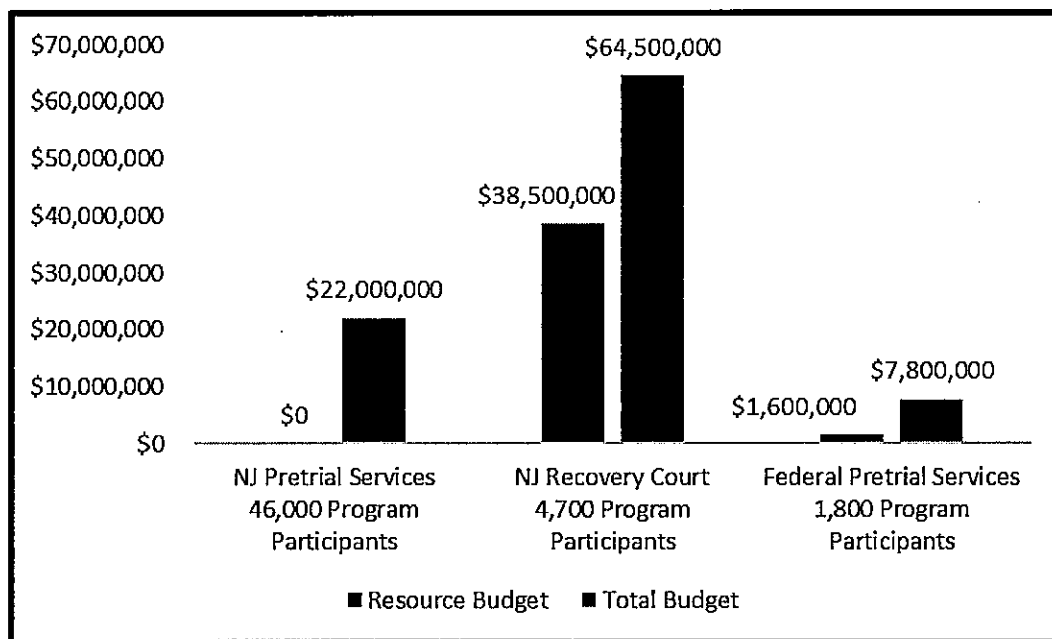
2. Resources for Defendants on Pretrial Release

The Subcommittee compared the current Pretrial Services program budget to other programs that provide supervision and services to support defendants. The New Jersey Federal Pretrial Program monitors about 1,800 federal defendants with a budget of \$7.8 million, with \$1.6 million of that budget available for social services and resources. The Judiciary's Recovery Court Program supervises about 4,700 clients and has a budget of almost \$65 million, with almost \$39 million dedicated to the Executive branch for resources and treatment services. In contrast, the New Jersey Pretrial Services Program currently monitors more than 46,000 defendants, with an operating budget of \$22 million, with no funding provided to the Executive branch for resources and services.

¹⁷ The tool would seek information about the defendant's housing, employment, transportation, food, treatment, and other potential needs.

Fig. 13

Budgeted Resources Allotted to Defendant Support Programs



The Subcommittee also reviewed other programs and initiatives that provide support services through cooperation and collaboration. For example, as amended in 2021, the Fair Release and Reentry Act of 2009 provides grant funding opportunities for every county to hire a “Reentry Coordinator” to help individuals released from prison obtain an identification card, housing and transportation, and connection to substance use and mental health treatment resources.¹⁸

Similarly, the Office of the Public Defender employs social workers to connect clients with local resources. Those “System Navigator” staff members are specially trained Public Defender investigators whose main job is to link

¹⁸ New Jersey’s Recovery Court Program, created in 1987 pursuant to N.J.S.A. 2C:35-14, likewise involves ongoing collaboration between the Judiciary, the Division of Mental Health and Addiction Services, community providers, prosecutors, and defense attorneys.

43x

clients to social services. In addition, non-profit entities, including but not limited to the New Jersey Reentry Corporation, Volunteers of America, and Jewish Family Services, provide critical support resources to defendants sentenced to probation and defendants released from prison to the Intensive Supervision Program.

- ***Subcommittee Recommendations -- Increased Connections to Resources***

The Subcommittee concluded that with increased staffing, Pretrial Services could connect defendants with existing resources in the community. Early connections to those resources could improve success during the pretrial period and, in some cases, facilitate diversion and other outcomes favorable for both defendants and communities.

RECOMMENDATION 14:

- Judiciary Pretrial Services staff should use all available resources to assist defendants -- whether through state, county, or non-profit entities -- and provide a list of available resources directly to defendants.
- In high volume counties, specific staff should be designated to liaison with local providers and directly connect defendants to such resources.

RECOMMENDATION 15:

- The Legislature should consider providing an opportunity for each County to establish a “Pretrial Coordinator,” who would work to connect those on pretrial release to programs and services in the County. A model for such a program could be the Fair Release and Reentry Act, which was amended in 2021 to provide grant funding to counties to establish a “Reentry Coordinator” for those being released after a sentence of incarceration. The legislation should make it clear that each county is permitted, where applicable, to use its current Reentry Coordinator to assist individuals on pretrial release, or hire additional staff to work as a Pretrial Coordinator.

RECOMMENDATION 16:

- Following New Jersey's successful Recovery Court model, the Department of Human Services should receive additional funding to provide services for defendants on pretrial release.

RECOMMENDATION 17:

- For defendants who have been on pretrial monitoring more than six (6) months, or upon indictment, Judiciary staff should screen the defendant's case(s) to determine whether the defendant may be eligible for Recovery Court in the future.
- Such defendants should be offered the opportunity to, on a voluntary basis, begin treatment for substance use disorder while on pretrial release.

3. Pretrial Monitoring

- *Pretrial Monitoring Levels (PML)*

When making a decision to release, and after considering the risk to public safety and the risk of failure to appear, a judge will order an individual to a pretrial monitoring level (PML) as follows:

- ROR - Release recommended (may have no victim / witness contact condition).
 - Defendant not required to report to PSP.
- PML 1 - Release recommended with minimal conditions.
 - Defendant required to report to PSP telephonically once per month.
- PML 2 - Release recommended with conditions.
 - Defendant required to report to PSP telephonically once per month and in person once per month.
- PML 3 - Release recommended with conditions.
 - Defendant required to report to PSP telephonically once every other week and in person once every other week.

- PML 3+ - Release recommended with conditions including home detention *with or without electronic monitoring*.
 - Defendant required to report to PSP telephonically once every other week and in person once every other week, and also ordered to home detention with or without electronic monitoring.

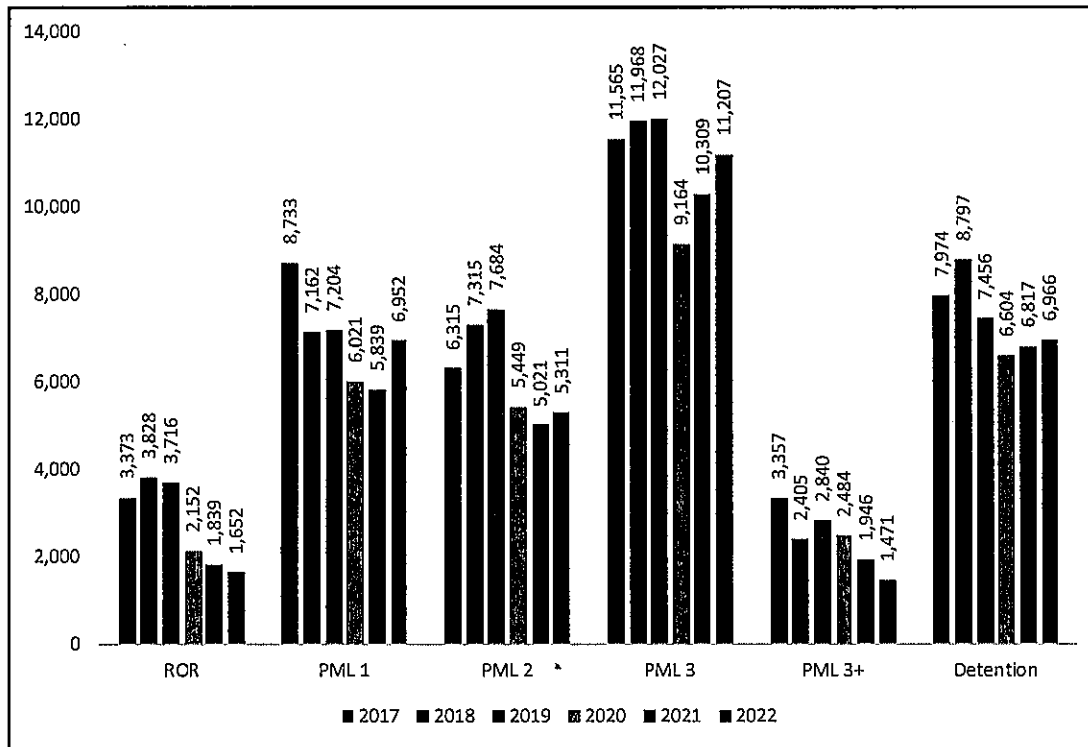
Judges order most defendants released on low levels of monitoring,¹⁹ with a small number of defendants released on PML3+²⁰ and a subset of those defendants subject to electronic monitoring.

¹⁹ Together, the categories of ROR, PML 1 and PML 2 totaled from 12,699 defendants in 2021 to a high of 18,604 defendants in 2019. Each year, judges ordered the largest number of defendants released on PML 3, ranging from a high of 12,027 in 2019 to a low of 9,164 defendants in 2020.

²⁰ For example, in 2022, judges ordered 1,471 defendants released on PML 3+.

Fig. 14

Initial Release Decisions for Criminal Justice Reform Defendants on Complaint-Warrants



This information is derived from the Criminal Justice Reform monthly statistics.

- ***Electronic Monitoring by Pretrial Services***

For defendants who are ordered to home detention with a GPS electronic monitoring (EM) bracelet, Pretrial Services staff receive alerts related to possible zone violations or bracelet tampering day and night, seven days a week. In response, Pretrial Services staff in all but two counties²¹ must contact law

²¹ Camden and Hudson County jails handle electronic monitoring and directly dispatch a law enforcement officer to respond to alerts when needed.

47x

enforcement and request that an officer check the defendant's home or last known location. Since Pretrial Services staff are not law enforcement, they use the non-emergency dispatch number as would any civilian. The responding law enforcement officer performs the check and then contacts Pretrial Services staff to advise whether the defendant has been found in a restricted zone or outside of the defendant's authorized zone. If the defendant is located in a prohibited area, Pretrial Services staff then contact a judge for a bench warrant. The current process consumes considerable time during which a defendant may pose a risk to victims or the larger community.

Additional complexities arise when law enforcement cannot locate a defendant. If the defendant is still wearing the electronic monitoring device, Pretrial Services staff provide updates on the defendant's last known location and communicate through dispatch until law enforcement locates the individual. This multi-step process is inefficient. Delays in dispatching law enforcement and in locating defendants create undue risks to public safety. Those systemic limitations contribute to the minimal use of EM even though it offers a less intrusive and more cost-efficient alternative than detention.

The Subcommittee on Pretrial Services discussed the possibility of an expanded role for law enforcement, accompanied by appropriate funding, in statewide electronic monitoring. The stakeholders remain committed to continued discussion on these issues moving forward.

The Subcommittee also considered P.L. 2023, c. 46, which amends N.J.S.A. 29-9(a) to clarify that an individual on pretrial release can be charged with contempt for violation of an order for no contact with a victim, or home detention with or without electronic monitoring. Training for law enforcement and judges on this

48x

recent statutory change will strengthen the response for violations of pretrial monitoring. Accordingly, the Subcommittee recommends that Attorney General Directives and Court Rules be revised to reflect this change in the law.

Subcommittee Recommendations – Pretrial Monitoring

RECOMMENDATION 18:

- The Attorney General should review Directives related to Criminal Justice Reform and consider modifications to (1) include cases charging contempt of an order for home detention or electronic monitoring among the cases for which law enforcement must apply for a complaint-warrant, and (2) include such cases among the cases for which the prosecutor is presumed to seek detention or revocation of release.²²

RECOMMENDATION 19:

- The Judiciary should review Rules of Court related to the issuance of summonses and warrants and consider amendments to make contempt of an order for no contact, or home detention or electronic monitoring a presumed warrant charge.

²² The Subcommittee considered P.L. 2023, c. 46 – Clarifies Penalties for Pretrial Release; directs prosecutor to provide written notice of release to victim.

REPORT OF THE DATA ANALYSIS

SUBCOMMITTEE

The Data Analysis Subcommittee examined areas in which data support further examination of -- and possible adjustments to -- the CJR processes. The Subcommittee reviewed data regarding: (1) repeat offenders; (2) theft offenses, including auto thefts; (3) domestic violence; (4) gun offenses; and (5) racial disparity in the pretrial jail population.

1. Repeat Offenders

To inform its examination of repeat offenders, the Subcommittee considered the substantial increase in defendants on pretrial release and the extended timeframes for case disposition.²³ It also compared data for defendants with no pending charges to the subset of defendants with two or more prior arrests, whose charges were pending at the time of their current offense.²⁴ In

²³ See the Report of the Pretrial Services Subcommittee, pages 36-38, for further information about the increase in pretrial population from 2020 to 2023.

²⁴ To understand the rearrest patterns of defendants with two or more arrests while on pretrial release when the charges were still pending, the Subcommittee considered a Research PSA, which included the calculation of PSA scores for all defendants with complaint-warrants and summonses in 2021. Further, the Supreme Court's Decision Making Framework identifies defendants with two or more separate pretrial arrests still pending at the time of the current offense. The analysis of repeat offenders specifically describes the subgroup of defendants rather than the universe of defendants with 2 or more separate, pending pretrial arrests.

addition, the Subcommittee reviewed data showing county-level variations in motions for detention and motions for revocation of release.²⁵

a. Case Disposition Rates

As detailed in the report of the Pretrial Services Subcommittee, the number of defendants on pretrial release has grown from 30,000 to more than 46,000 during the past three years. During that same timeframe, the Covid-19 pandemic and judicial vacancies have delayed criminal dispositions and extended the average pretrial period for defendants by more than 100 days.

As illustrated in the following table, criminal courts currently have nearly 18,000 more cases pending than in February 2020.

Fig. 15

Pending Criminal Division Cases

	February 29, 2020	March 31, 2023	Difference
Criminal Pre-Indictment	17,728	28,479	10,751
Criminal Post-Indictment	13,839	21,151	7,312
Municipal Appeals	211	174	-37
Post-Conviction Relief	565	495	-70
Total	32,343	50,299	17,956

Growth in the number of pending cases means that many defendants -- including those detained and on pretrial release -- wait longer for their cases to reach disposition. In addition, extended time awaiting trial can contribute to an

²⁵ See the Report of the Pretrial Services Subcommittee, pages 32-34, for details about county-level variation in handling revocations of release.

increased risk of rearrest, particularly for defendants in need of mental health, substance use, and other resources.²⁶

b. Analysis of Defendants with no Pending Charges at Current Arrest

According to the data, most defendants who have no pending charges at the time of their current arrest complete their pretrial release period without being rearrested. For 2021, for example, there were 36,935 defendants released on either a complaint-summons or a complaint-warrant who, at the time of their arrest, had no pending charges. Of those defendants, 29,679 (80.4%) were not rearrested while on pretrial release.²⁷

Of the other 7,256 people without pending charges who were rearrested while on pretrial release:

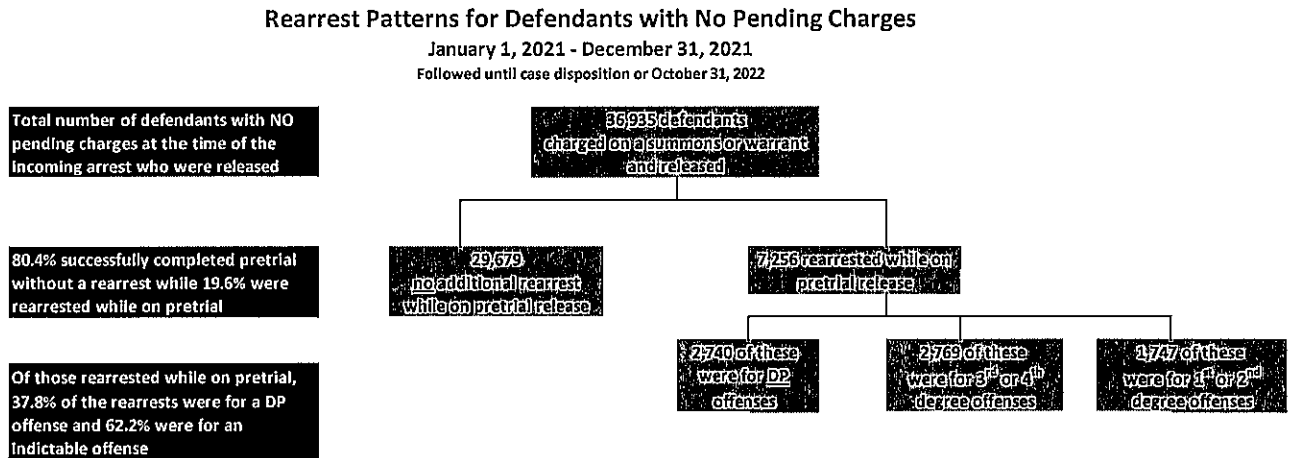
- 2,740 were rearrested for a disorderly persons offense
- 2,769 were rearrested for a 3rd or 4th degree offense
- 1,747 were rearrested for a 1st or 2nd degree offense

²⁶ See the Report of the Pretrial Services Subcommittee, pages 40-42, for recommendations to connect released defendants with treatment and other resources before case disposition.

²⁷ To examine rearrest rates including both complaint-summonses and complaint-warrants, the Subcommittee utilized the Research PSA dataset. That dataset treats each person-arrest-event independently, which carries with it the possibility that a small number of defendants may be counted more than once.

Fig. 16

Rearrest Patterns for Defendants with No Pending Charges



53x

c. Analysis of Defendants with 2 or More Prior Arrests with Those Charges Still Pending at Current Arrest

Unlike defendants with no pending charges at the time of arrest, defendants with two or more prior arrests at the time of the current offense with those charges still pending during the pretrial release period were more likely to be arrested again while on pretrial release.

The Supreme Court's Decision Making Framework (DMF) provides for a no release recommendation when a person was previously arrested on two separate occasions, and when those charges were still pending at the time of the current offense.²⁸ Therefore, if a defendant has two or more prior arrests with those charges still pending, the system generated Preliminary PSA recommends charging by a complaint-warrant; that recommendation will be displayed for the law enforcement officer who runs the Preliminary PSA. The Subcommittee considered that aspect of the DMF, focusing on defendants who were repeatedly rearrested.

There were 7,258 defendants in the subset of 2021 defendants identified by the DMF as having two or more repeated arrests on pretrial release at the time of the current offense. The Preliminary PSA would have resulted in a recommendation to charge by complaint-warrant for 7,258 defendants arrested in 2021. However, 4,894 (67.4%) of those 7,258 defendants were charged by complaint-summons and were therefore not monitored by Pretrial Services and not eligible for pretrial detention. That high rate of charging by complaint-

²⁸ Decision Making Framework - Revised August 2, 2022 (njcourts.gov); Supreme Court Approves Changes to Pretrial Release Recommendations for Gun Crimes, Repeat Offenders (njcourts.gov).

summonses suggests inconsistent adherence to law enforcement guidance regarding when to charge by summons versus warrant.²⁹

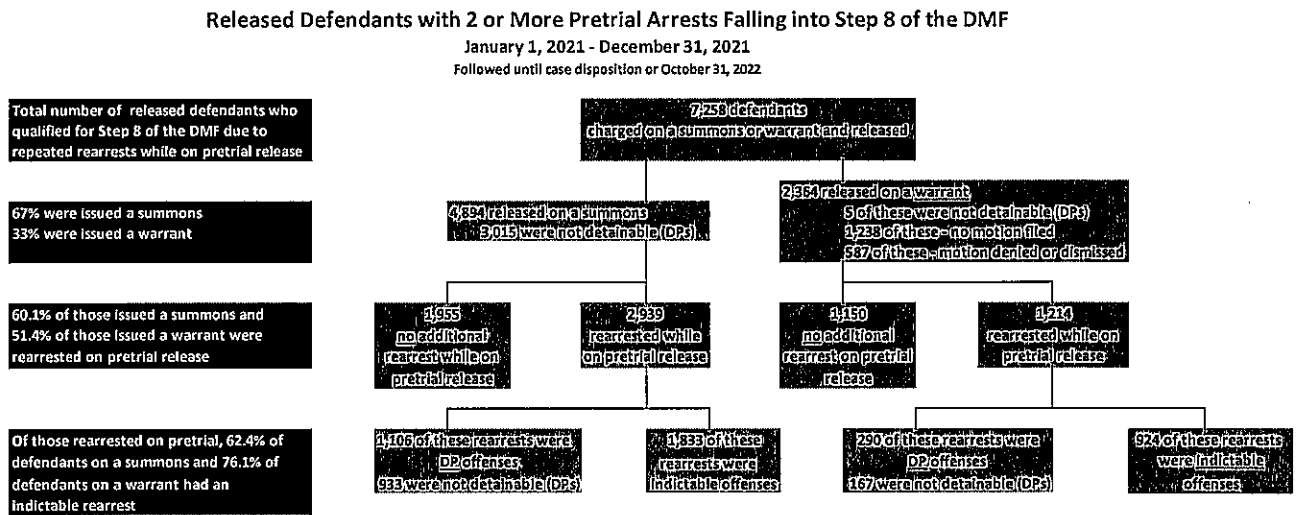
Ultimately, 2,939 (60.1%) of the 4,894 defendants charged by a complaint-summons were rearrested while on pretrial release. Of those 2,939 defendants:

- 1,302 were rearrested for a 3rd or 4th degree offense
- 1,106 were rearrested for a disorderly persons offense
- 531 were rearrested for a 1st or 2nd degree offense

²⁹ See the Report of the Subcommittee on Pretrial Processes, pages 18-20, regarding the use of the Preliminary PSA and factors to be considered in charging by summons versus warrant.

Fig. 17

Released Defendants with 2 or More Pretrial Arrests Falling into Step 8 of the DMF



56x

Of the remaining 2,364 defendants who were released after issuance of a complaint-warrant, 1,214 defendants (51.4%) were rearrested while on pretrial release. Of those defendants:

- 609 were rearrested for a 3rd or 4th degree offense
- 290 were rearrested for a disorderly persons offense
- 315 were rearrested for a 1st or 2nd degree offense

As advocated by this and other Subcommittees, defendants on pretrial release would benefit from connection to mental health and substance use treatment as well as other resources.

The Subcommittee observed that (1) the PSA risk assessment considers pending charges at the time of an offense and heavily weighs the first rearrest during the pretrial release period; but (2) the PSA does not consider a second, third, or additional arrest incurred during the pretrial release period.³⁰ To address that concern with the PSA, the Supreme Court in 2017 modified the DMF to provide for a no release recommendation when a person was previously arrested on two separate occasions and those charges were still pending at the time of the current offense.³¹

d. Motions for Detention and Motions to Revoke Release

The data reveal substantial variation regarding the rates at which (1) prosecutors file motions to detain defendants pretrial; (2) prosecutors withdraw those motions; and (3) judges grant or deny detention.³² Inconsistency in

³⁰ Simply put, a defendant with one (1) pending offense will receive the same weighted score on the PSA as a defendant with five (5) pending offenses.

³¹ Decision Making Framework - Revised August 2, 2022 (njcourts.gov)
Supreme Court Approves Changes to Pretrial Release Recommendations for Gun Crimes, Repeat Offenders (njcourts.gov).

³² See the Report of the Subcommittee on Pretrial Process, pages 29-31, for data on county-level variation in detention motions and outcomes.

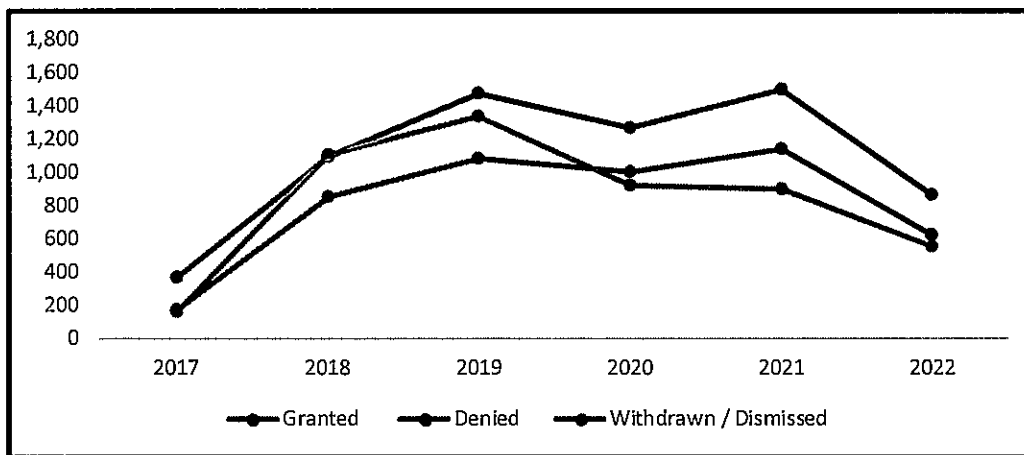
applications for pretrial detention -- and variations in the way judges handle such applications -- raise concerns about repeat offenders who may be more likely to be arrested on new charges while on pretrial release.

Similar concerns surround the variation in release revocation for repeat offenders. A prosecutor may file a motion to revoke release when a defendant violates release conditions, including for rearrest during the pretrial period, failure to appear for a court hearing, violation of electronic monitoring or home detention, or a threat against a victim or witness. As detailed in the Report of the Subcommittee on Pretrial Processes, motions to revoke release declined from 2021 to 2022, with a significant portion of those motions being withdrawn or dismissed.

Fig. 18

Motions to Revoke Release

	2017	2018	2019	2020	2021	2022
Total motions filed	698	3,052	3,899	3,193	3,548	2,044
Motions withdrawn / dismissed	160	1,109	1,336	924	901	553
Motions decided by judges	538	1,943	2,563	2,269	2,647	1,491
Motions granted	366	1,094	1,478	1,266	1,504	863
Motions denied	172	849	1,085	1,003	1,143	628



58x

A statewide review of the number of motions to revoke release filed, and subsequently withdrawn, shows significant variation: from no withdrawn motions in one county, to another in which 71.4% of motions to revoke were withdrawn. Judges also granted and denied motions to revoke release at different rates: from a low of 33.3% in one county to a high of 80% in another county.

Fig. 19

Motions to Revoke Release Filed by Prosecutors in 2022

	Granted Motions		Denied Motions		Total Decisions by a Judge		Motions Filed then				Total Motions Filed, including Granted, Denied, Withdrawn and Dismissed
	Percent of		Percent of		Percent of		Withdrawn		Dismissed		
	Number	Decisions	Number	Decisions	Number	Total Motions	Number	Total	Number	Total	Number
Atlantic	33	67.3%	16	32.7%	49	72.1%	19	27.9%	0	0.0%	68
Bergen	43	72.9%	16	27.1%	59	67.8%	25	28.7%	3	3.4%	87
Burlington	83	45.4%	100	54.6%	183	69.3%	79	29.9%	2	0.8%	264
Camden	26	61.9%	16	38.1%	42	46.2%	47	51.6%	2	2.2%	91
Cape May	44	66.7%	22	33.3%	66	76.7%	19	22.1%	1	1.2%	86
Cumberland	74	60.2%	49	39.8%	123	87.2%	15	10.6%	3	2.1%	141
Essex	22	66.7%	11	33.3%	33	54.1%	27	44.3%	1	1.6%	61
Gloucester	77	50.0%	77	50.0%	154	59.7%	95	36.8%	9	3.5%	258
Hudson	24	80.0%	6	20.0%	30	54.5%	20	36.4%	5	9.1%	55
Hunterdon	8	72.7%	3	27.3%	11	73.3%	4	26.7%	0	0.0%	15
Mercer	37	60.7%	24	39.3%	61	83.6%	11	15.1%	1	1.4%	73
Middlesex	38	63.3%	22	36.7%	60	75.0%	12	15.0%	8	10.0%	80
Monmouth	17	54.8%	14	45.2%	31	53.4%	27	46.6%	0	0.0%	58
Morris	17	60.7%	11	39.3%	28	68.3%	10	24.4%	3	7.3%	41
Ocean	69	34.0%	134	66.0%	203	83.9%	39	16.1%	0	0.0%	242
Passaic	131	78.4%	36	21.6%	167	93.8%	8	4.5%	3	1.7%	178
Salem	31	43.7%	40	56.3%	71	78.9%	19	21.1%	0	0.0%	90
Somerset	17	63.0%	10	37.0%	27	90.0%	2	6.7%	1	3.3%	30
Sussex	8	66.7%	4	33.3%	12	100.0%	0	0.0%	0	0.0%	12
Union	62	82.7%	13	17.3%	75	80.6%	16	17.2%	2	2.2%	93
Warren	2	33.3%	4	66.7%	6	28.6%	15	71.4%	0	0.0%	21
State	863	57.9%	628	42.1%	1,491	72.9%	509	24.9%	44	2.2%	2,044

The rates at which prosecutors file motions to revoke release, combined with variation in judicial decisions as to revocation, exacerbate problems associated with repeat offenders and may contribute to a perception that defendants are allowed to reoffend. The Subcommittee agreed it is important to offer new processes and treatment interventions to ensure consistent application of the tools available under CJR, increase

59x

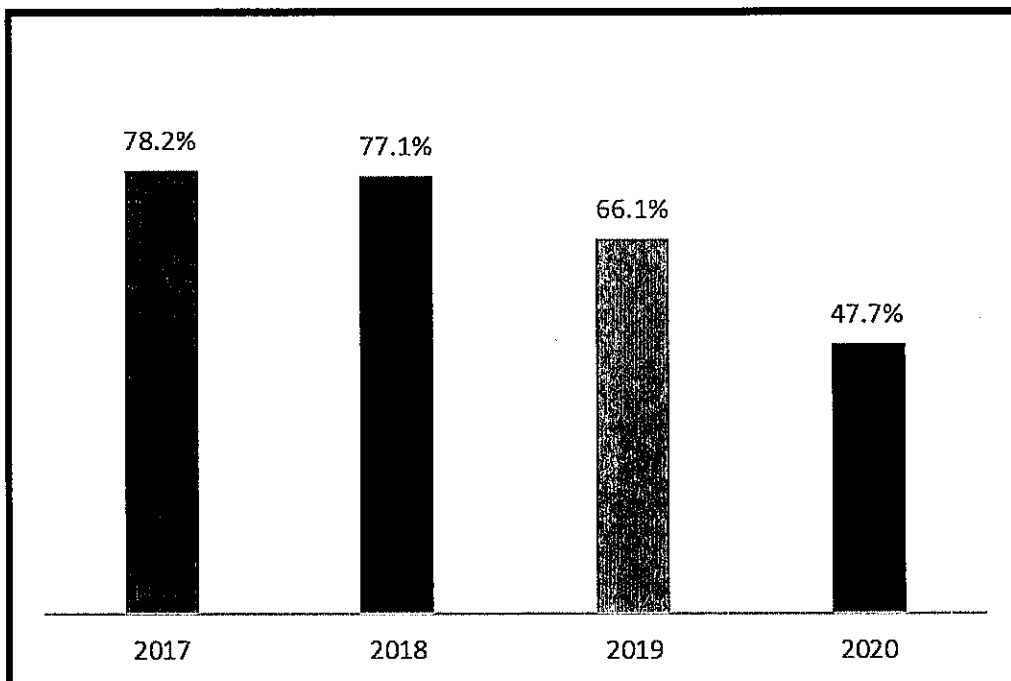
public safety, and offer defendants the opportunity for treatment to stop criminogenic behavior.

- ***Subcommittee Recommendations -- Repeat Offenders***

Case backlog, exacerbated by the impact of the Covid-19 pandemic and judicial vacancies, has caused the average pretrial period for defendants to increase significantly. In the first 2 years after implementation of CJR, nearly 80% of cases were disposed of by October 31st of the following year. In 2020 and 2021, however, less than 50% of defendants on pretrial release had their cases completed by October 31st of the following year. The Subcommittee recommends clarification and refinement of CJR processes, along with earlier resolution of cases and earlier connections to treatment and diversionary programs, to better address the public safety risk posed by repeat offenders. The Subcommittee further recommends strategies to support consistency in prosecutor and judge practices related to motions to revoke release.

Fig. 20

Percentage of Cases Disposed within 22-Month Period



60x

RECOMMENDATION 20:

- For an eligible defendant who has been detained or has had their release revoked, and who has more than one case pending in Superior Court, the court should schedule a case management conference within 60 days of the order detaining the defendant or revoking the defendant's release.
- At the conference, the prosecutor and defendant's attorney should be prepared to discuss all pending cases, including disorderly persons cases issued on a complaint-warrant, and update the court as to the progress of plea negotiations.

RECOMMENDATION 21:

- For an eligible defendant who has more than one case pending in Superior Court, upon the joint request of the parties, when they have indicated they are prepared to discuss a resolution of all pending matters, the court should schedule a case management conference.
- At the conference, the prosecutor and defendant's attorney should be prepared to discuss all pending cases, including disorderly persons cases issued on a complaint-warrant, and update the court as to the progress of plea negotiations.

RECOMMENDATION 22:

- The Legislature should consider amending the Criminal Justice Reform Act to clarify that it allows for the temporary detention of an eligible defendant when a prosecutor has filed a motion for revocation of release and the defendant is in custody. The process and timelines should be similar to those for motions for detention.

RECOMMENDATION 23:

- The Legislature should consider amending the Criminal Justice Reform Act to require pretrial services to make a recommendation to revoke release for an eligible defendant who has been charged with a new offense on a complaint-warrant and who, at the time of the current offense, had previously been

arrested on two separate occasions, and those charges were still pending at the time of the current offense. The Act should further provide that such recommendation by pretrial services may be used as prima facie evidence to overcome the presumption of release.

- The above requirement should apply if the current offense or at least one of the pending charges is for an indictable offense or a disorderly persons offense where domestic violence is indicated.

RECOMMENDATION 24:

- The Legislature should consider amending the Criminal Justice Reform Act to grant the court the discretion to permit a defendant whose release has been revoked to voluntarily accept an offer for release on conditions that include attendance and completion of drug, alcohol, or mental health treatment at an approved program or facility when and to the extent clinically indicated.

2. Theft Offenses / Automobile Theft

Car thefts, including those involving juvenile offenders, continue to garner significant public attention. At a minimum, auto and other thefts compromise quality of life in our communities. In some cases, such criminal activity also threatens individual safety.

- *Data on Theft Offenses*

Because there is no distinct charging statute, the data are unable to systematically differentiate between cases that involve automobile theft or other types of theft. As the next best alternative, the Subcommittee reviewed data regarding the offenses most likely involved when an individual is charged with vehicular theft.

Fig. 21

Frequency of Theft Charges per Year

Statute	Degree	Charge Description
Statutes charged fewer than 6,000 times per year		
2C:20-3A	3	Theft By Unlawful Taking-Movable Property Value \$500-\$74999 Etc
2C:20-7A	3	Receiving Stolen Property-Know Property Stolen-Value 500-74999 Etc
Statutes charged fewer than 200 times per year		
2C:20-3A	2	Theft By Unlawful Taking-Movable Property Value \$75000+ Etc
2C:20-2B(2)(B)	3	Theft-Firearm/Motor Vehicle/Vessel/ Boat/Horse/Pet/Airplane
Statutes charged fewer than 20 times per year		
2C:20-17A	2	Use Of Juvenile In Automobile Theft
2C:20-18	2	Leader Of Auto Theft Trafficking Network
2C:20-2B(4)(B)	D	Theft - Electronic Vehicle ID System Transponder
TOTAL		

The percentage of specific theft offenses charged by complaint-warrant as compared to those charged on a complaint-summons varies by county.

63x

Fig. 22

Number and Percentage of Summonses and Warrants with Specific Theft Offenses by County

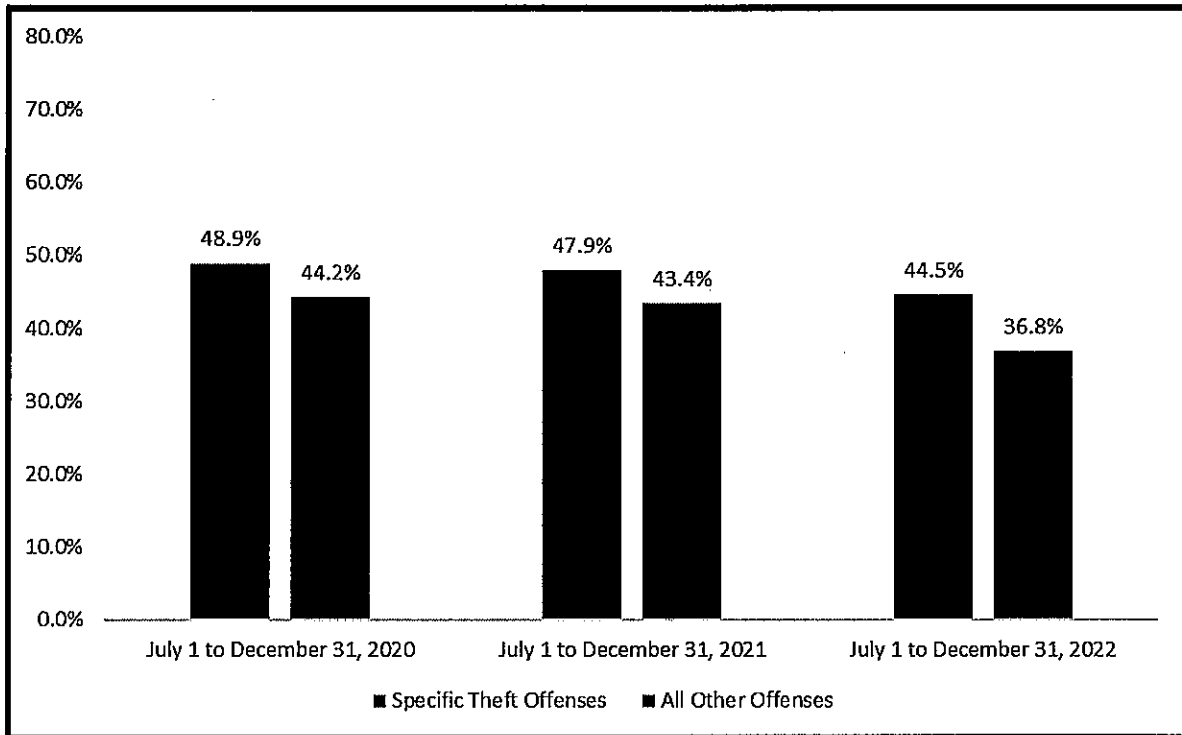
County	Jul 1 to Dec 31, 2019				Jul 1 to Dec 31, 2020				Jul 1 to Dec 31, 2021				Jul 1 to Dec 31, 2022			
	Summonses		Warrants		Summonses		Warrants		Summonses		Warrants		Summonses		Warrants	
	Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent
Atlantic	229	84.5%	42	15.5%	131	77.5%	38	22.5%	166	83.4%	33	16.6%	361	85.3%	62	14.7%
Bergen	255	65.4%	135	34.6%	169	60.6%	110	39.4%	184	62.8%	109	37.2%	265	56.5%	204	43.5%
Burlington	97	47.1%	109	52.9%	73	57.5%	54	42.5%	92	46.5%	106	53.5%	128	50.6%	125	49.4%
Camden	204	58.1%	147	41.9%	214	56.9%	162	43.1%	203	62.1%	124	37.9%	257	54.7%	213	45.3%
Cape May	29	53.7%	25	46.3%	24	53.3%	21	46.7%	29	50.0%	29	50.0%	29	53.7%	25	46.3%
Cumberland	87	61.3%	55	38.7%	77	71.3%	31	28.7%	70	55.6%	55	44.4%	60	49.2%	62	50.8%
Essex	149	27.9%	386	72.1%	143	29.4%	344	70.6%	167	32.1%	354	67.9%	171	29.4%	410	70.6%
Gloucester	82	63.1%	48	36.9%	52	45.2%	63	54.8%	76	55.1%	62	44.9%	108	58.4%	77	41.6%
Hudson	158	37.1%	268	62.9%	79	32.4%	165	67.6%	78	30.1%	181	69.9%	126	32.0%	268	68.0%
Hunterdon	14	60.9%	9	39.1%	8	53.3%	7	46.7%	10	62.5%	6	37.5%	18	50.0%	18	50.0%
Mercer	93	42.3%	127	57.7%	79	40.7%	115	59.3%	87	34.5%	165	65.5%	103	49.0%	107	51.0%
Middlesex	169	55.8%	134	44.2%	120	55.0%	96	44.4%	160	66.1%	82	33.9%	183	68.3%	85	31.7%
Monmouth	118	54.9%	97	45.1%	90	55.2%	73	44.8%	100	53.2%	88	46.8%	90	40.2%	134	59.8%
Morris	70	58.8%	49	41.2%	46	49.5%	47	50.5%	42	56.8%	32	43.2%	73	50.3%	72	49.7%
Ocean	80	51.6%	75	48.4%	64	47.1%	72	52.9%	73	49.7%	74	50.3%	75	45.5%	90	54.5%
Passaic	80	41.7%	112	58.3%	56	33.9%	109	66.1%	84	44.2%	106	55.8%	98	42.1%	135	57.9%
Salem	29	61.7%	18	38.3%	17	42.5%	23	57.5%	17	40.5%	25	59.5%	22	47.8%	24	52.2%
Somerset	8	38.1%	13	61.9%	18	33.3%	36	66.7%	16	43.2%	21	56.8%	11	25.0%	33	75.0%
Sussex	22	53.7%	19	46.3%	11	47.8%	12	52.2%	18	64.3%	10	35.7%	14	51.9%	13	48.1%
Union	106	50.2%	105	49.8%	85	63.4%	49	36.6%	84	52.8%	75	47.2%	145	47.4%	161	52.6%
Warren	6	28.6%	15	71.4%	4	18.2%	18	81.8%	10	45.5%	12	54.5%	13	43.3%	17	56.7%
Statewide Total	2,085	51.2%	1,988	48.8%	1,560	48.7%	1,645	51.3%	1,766	50.2%	1,750	49.8%	2,350	50.2%	2,335	49.8%

Overall, prosecutors file motions to detain defendants charged with specific theft offenses at a slightly higher rate than defendants charged with other offenses.

64x

Fig. 23

Percent of Defendants with Detention Motions Filed by Prosecutors

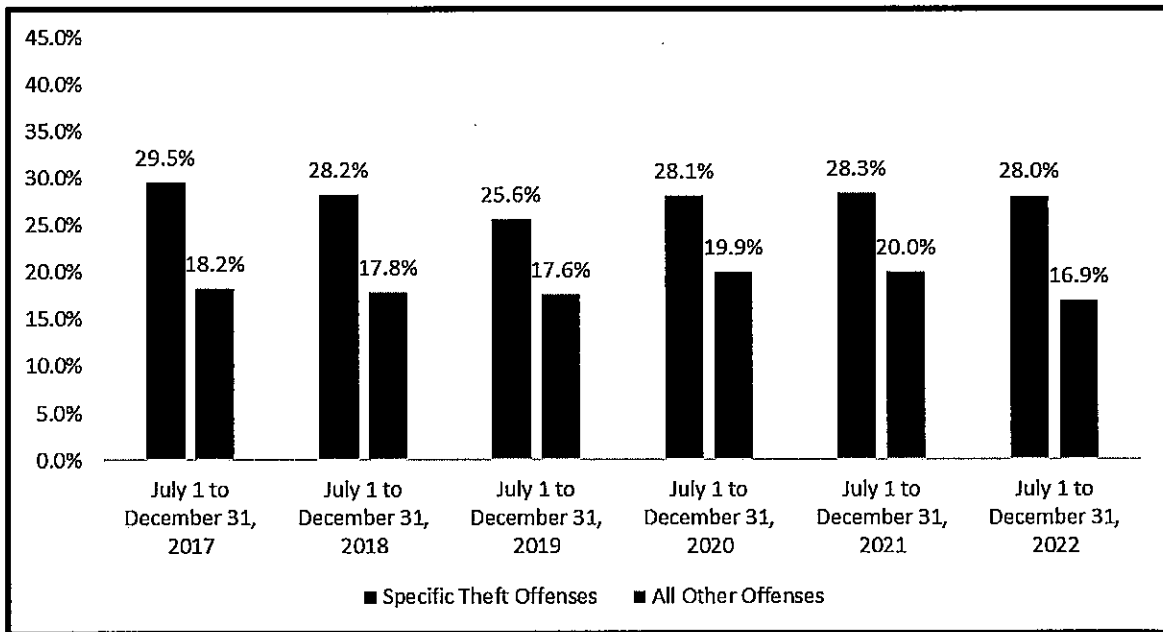


65x

In addition, judges order detention for defendants charged with specific theft offenses at a higher rate than defendants charged with other offenses.

Fig. 24

Percent of Defendants Detained out of Those Issued Complaint-Warrants

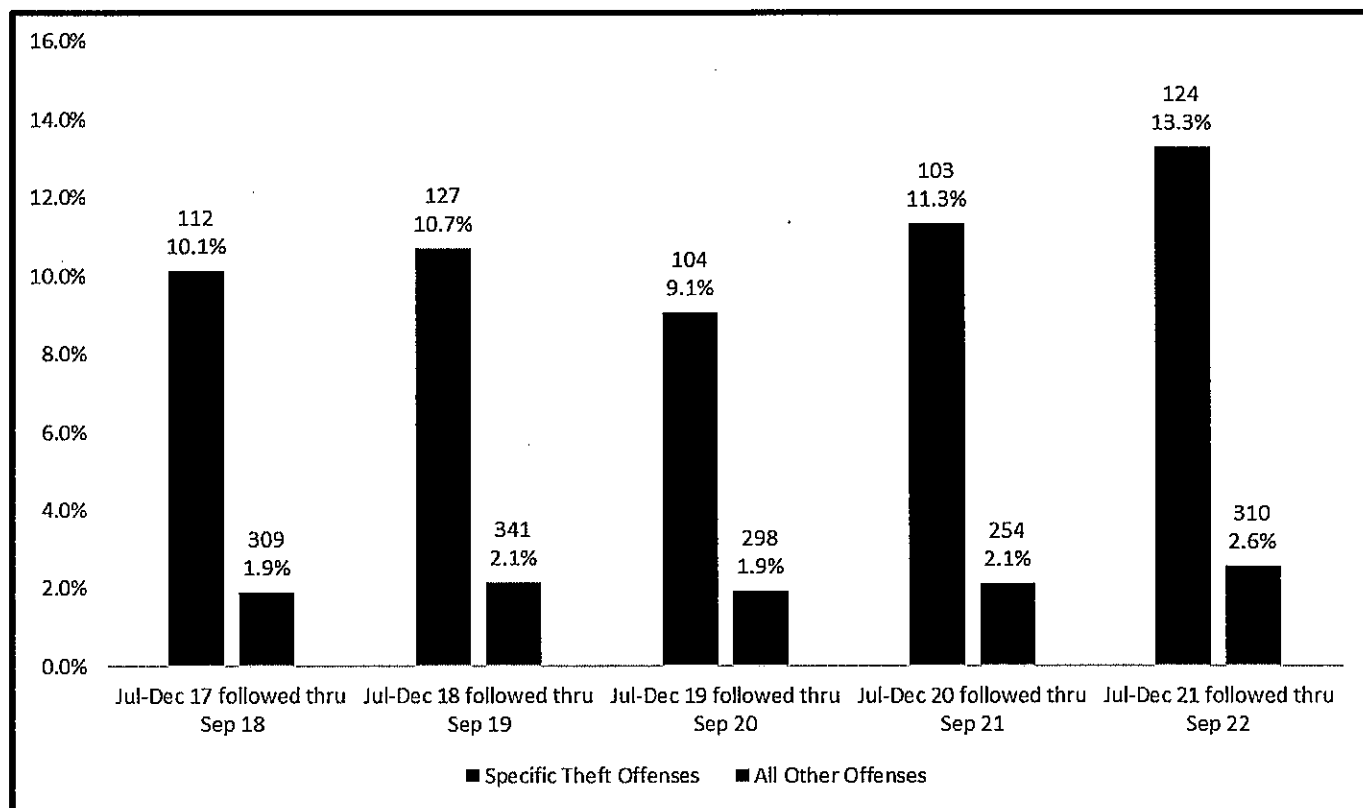


Defendants charged with specific theft offenses and released pending trial tend to be rearrested more frequently for new specific theft offenses than defendants initially charged with other offenses.

66x

Fig. 25

Percentage of Defendants with Complaint-Warrants Who were Rearrested for Specific Theft Offenses on Pretrial Release



• *Subcommittee Recommendations -- Auto Theft*

RECOMMENDATION 25:

- The Attorney General should review Directives related to Criminal Justice Reform and consider modifications to (1) include automobile theft cases among the cases for which law enforcement must apply for a complaint-warrant, and (2) include cases involving repeat automobile theft charges among the cases for which the prosecutor is presumed to seek detention or revocation of release.

67x

RECOMMENDATION 26:

- The Judiciary should review Rules of Court related to the issuance of summonses and warrants and consider amendments to make automobile theft a presumed warrant charge.

3. Domestic Violence

Domestic violence causes an array of direct and indirect harms to victims, as well as children and other witnesses. Leaders of all branches of government, as well as advocates and community members, continue to work together to identify and implement strategies to stop the cycle of abuse, protect victims, and facilitate rehabilitation for perpetrators.

- *Domestic Violence Data*

Where domestic violence is indicated, law enforcement most frequently charges a defendant with simple assault, contempt for violation of a restraining order, harassment, criminal mischief, or strangulation.³³

³³ The number of complaints in which strangulation of a domestic violence victim was the highest charge increased from 2020 to 2021, likely due to increased awareness of the offense among law enforcement and recent legislation that provides for strangulation to be charged as a 2nd or 3rd degree offense. P.L. 2021, c. 172 – Increases Strangulation Assault to Crime of the Second Degree.

Fig. 26

Count of Primary Charges on DV-indicated Complaints

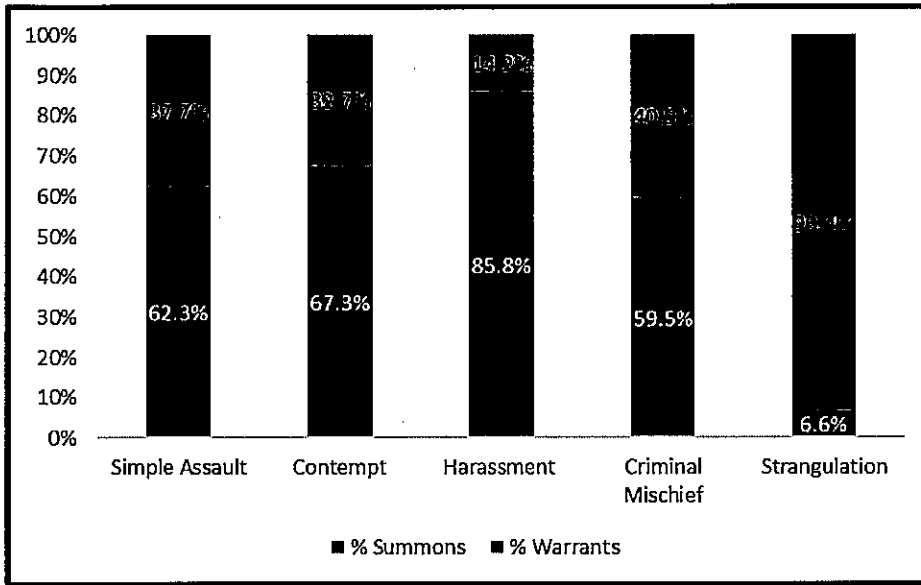
Primary Charges	2020	2021	2022
Simple assault	13,262	12,762	13,039
Contempt	5,180	5,735	6,137
Harassment	2,331	2,065	2,185
Criminal mischief	2,146	2,084	2,203
Strangulation of a DV victim	1,732	2,137	2,661
Possession of a weapon	754	750	821
Aggravated assault of a DV victim	696	655	679
Murder	32	42	37
Attempted murder	31	33	45

The rates of charges issued on a complaint-summons, as opposed to a complaint-warrant, generally align with the seriousness of the circumstances and degree of offense. For example, for domestic violence indicated matters in 2022, law enforcement charged 60% of simple assaults and 80% of harassments by complaint-summons. In contrast, law enforcement charged more than 90% of strangulations by complaint-warrant.

69x

Fig. 27

Primary Charge on Domestic Violence Indicated Complaint by Type in 2022



Data for 2021 show that defendants issued complaints for domestic violence indicated matters were charged by complaint-warrants (59.7%) more often than by complaint-summonses (40.3%). As in other areas, however, charging practices vary by county, with one county at 90% of domestic violence indicated defendants charged by complaint-warrants, and another county at only 25.9%. Such county-level variation suggests that law enforcement and prosecutors may benefit from continued training on Attorney General Directives on domestic violence matters.

Fig. 28

Defendants Issued Domestic Violence Indicated Complaints by Type and County

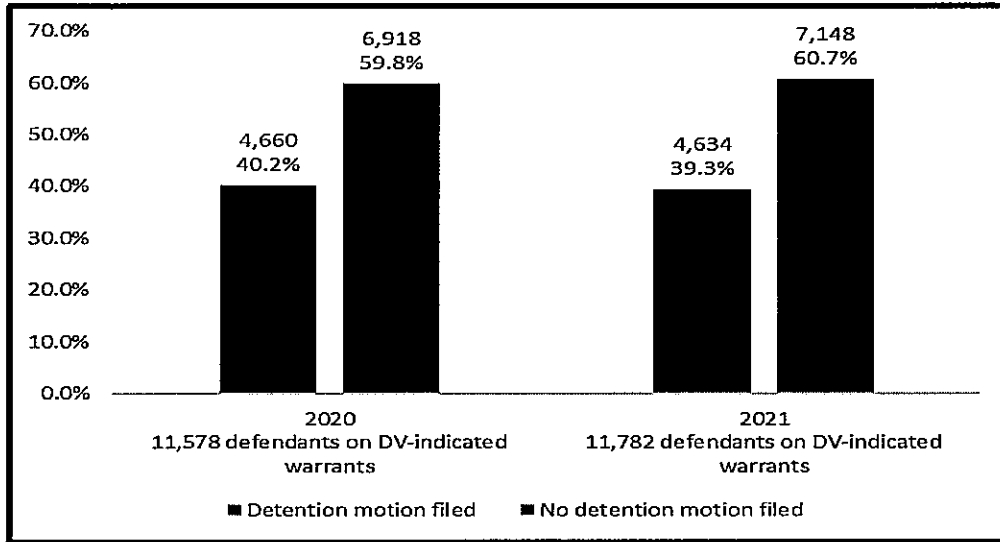
County	2020					2021				
	Summonses	Percent	Warrants	Percent	Total	Summonses	Percent	Warrants	Percent	Total
Atlantic	564	67.1%	276	32.9%	840	647	74.1%	226	25.9%	873
Bergen	450	51.0%	432	49.0%	882	414	49.9%	415	50.1%	829
Burlington	533	52.8%	476	47.2%	1,009	452	49.9%	454	50.1%	906
Camden	1,281	55.7%	1,019	44.3%	2,300	1,272	51.9%	1,178	48.1%	2,450
Cape May	154	50.8%	149	49.2%	303	112	40.1%	167	59.9%	279
Cumberland	635	67.1%	311	32.9%	946	697	67.1%	342	32.9%	1,039
Essex	666	21.5%	2,438	78.5%	3,104	444	18.6%	1,943	81.4%	2,387
Gloucester	539	62.7%	320	37.3%	859	513	61.4%	323	38.6%	836
Hudson	427	32.0%	908	68.0%	1,335	441	29.2%	1,067	70.8%	1,508
Hunterdon	83	65.4%	44	34.6%	127	57	64.8%	31	35.2%	88
Mercer	90	8.2%	1,011	91.8%	1,101	88	8.4%	964	91.6%	1,052
Middlesex	626	46.4%	722	53.6%	1,348	567	42.5%	768	57.5%	1,335
Monmouth	431	44.8%	530	55.2%	961	332	36.7%	573	63.3%	905
Morris	233	54.1%	198	45.9%	431	163	45.2%	198	54.8%	361
Ocean	468	42.9%	623	57.1%	1,091	408	39.3%	630	60.7%	1,038
Passaic	440	31.3%	967	68.7%	1,407	457	29.7%	1,084	70.3%	1,541
Salem	178	62.0%	109	38.0%	287	194	63.4%	112	36.6%	306
Somerset	177	42.5%	239	57.5%	416	140	35.2%	258	64.8%	398
Sussex	148	75.1%	49	24.9%	197	113	69.3%	50	30.7%	163
Union	428	39.0%	669	61.0%	1,097	397	31.7%	856	68.3%	1,253
Warren	71	44.7%	88	55.3%	159	59	29.2%	143	70.8%	202
Statewide Total	8,622	42.7%	11,578	57.3%	20,200	7,967	40.3%	11,782	59.7%	19,749

The Subcommittee also examined data related to detention motions for domestic violence indicated defendants. In 2021, law enforcement filed detention motions for 4,634 of 11,782 defendants (or 39.3%) with charges in which domestic violence was indicated.

71x

Fig. 29

Motions Filed for Domestic Violence Indicated Complaints

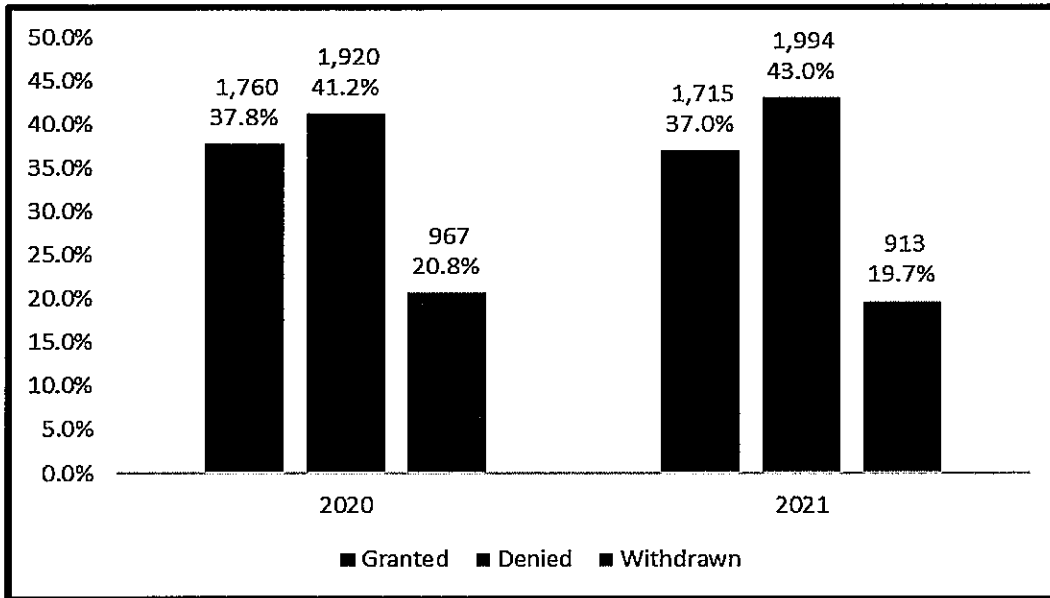


Of those 4,634 defendants with detention motions filed in 2021:

- 913 (19.7%) were withdrawn
- 1,994 (43.0%) were denied
- 1,715 (37.0%) were granted
- 12 (0.3%) were dismissed (not shown in Fig. 17)

Fig. 30

Motions Results for Domestic Violence Indicated Complaints



The Subcommittee discussed the current practice in which attorneys are appointed to provide pro bono representation for defendants charged with restraining order violations that are heard in the Family courts. Because those charges are graded as disorderly persons offenses, they do not technically qualify for representation by the Office of the Public Defender. Given the needs of this docket type and the vulnerable populations involved, the Subcommittee noted that the system would be better served by having consistent representation by the Office of the Public Defender, which is in a better position to identify and link the needs of charged individuals as a result of their subject-matter expertise.³⁴

³⁴ See the Report and Recommendations of the Judiciary Working Group on Attorney Pro Bono Assignments, as published for public comment on May 8, 2023, for this same recommendation.

- *Subcommittee Recommendations -- Domestic Violence*

Despite the benefits of recent legislative amendments and awareness efforts, the Subcommittee recommends further training, resources, and system-wide improvements to address domestic violence matters.

RECOMMENDATION 27:

- The Attorney General and County Prosecutors Association should partner to ensure that law enforcement officers and prosecutors receive additional and ongoing training regarding charges for strangulation of a domestic violence victim, and the resources available to provide victims support during the pendency of a criminal or domestic violence case.

RECOMMENDATION 28:

- The Legislature should take action to require standards for abusive partner intervention domestic violence programs.
- Resources should be allocated to make such programs available for individuals on pretrial release.

RECOMMENDATION 29:

- The Legislature should take action to provide for representation by the Office of the Public Defender in domestic violence related CJR cases that are within the jurisdiction of the Superior Court, Family Division.
- Appropriate funding must be included to properly implement this new role.

RECOMMENDATION 30:

- The Judiciary should continue to engage in research, using New Jersey court data, to determine whether improvements can be made regarding the predictive accuracy of the PSA.

74X

- Areas of examination should include the use of temporary restraining order or other domestic violence data; the use of age as a factor; limiting failures to appear to within a certain period of time; limiting disorderly persons convictions to within a certain period of time; and limiting indictable convictions to within a certain period of time.

4. Graves Act Offenses

The Subcommittee examined preliminary data regarding detention of defendants charged with gun offenses pursuant to the Graves Act.

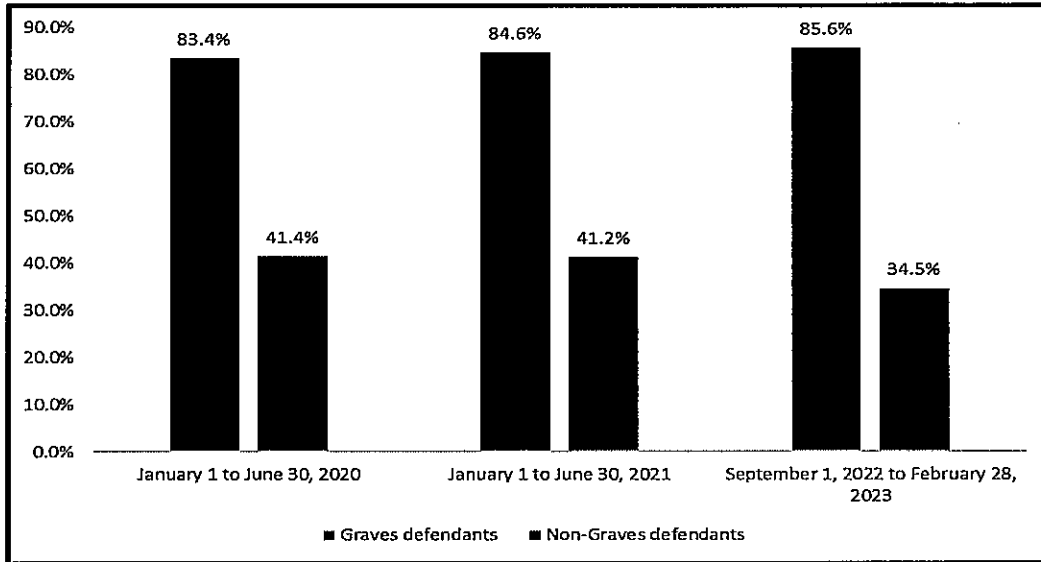
- *Effects of Recent Legislative Amendments*

In June 2022, the Legislature amended the CJRA for defendants charged with gun offenses that subjected them to sentencing pursuant to the Graves Act. For those defendants, Pretrial Services must issue a recommendation of no release, and that recommendation can be used as prima facie evidence to overcome the presumption of release.

The Subcommittee reviewed data for defendants subject to a no release recommendation pursuant to the amendment and found that prosecutors filed detention motions at a rate of 85.6%, which is slightly higher than prior years and demonstrably higher than the rate of detention motions for defendants who are not charged with Graves Act offenses.

Fig. 31

Detention Motions Filed for Defendants with Certain Graves Act Offenses

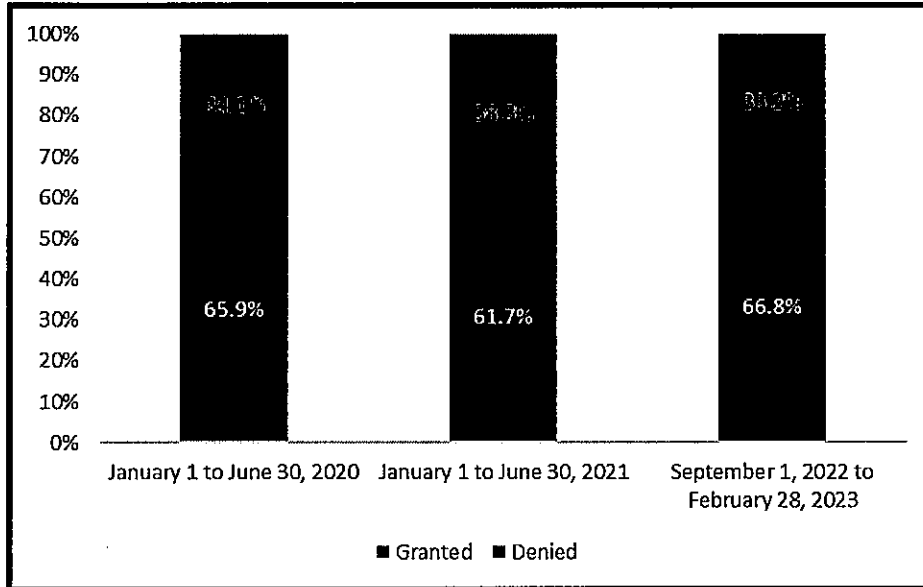


In addition, judges ordered detention for defendants charged with Graves Act offenses at a rate of 66.8%, which is slightly higher than before the amendments to the CJRA.

76x

Fig. 32

Detention Motions Decided for Defendants with Certain Graves Act Offenses



• *Subcommittee Conclusion -- Graves Act Offenses*

In light of the relatively recent amendments to the CJRA in this area, the Subcommittee makes no specific recommendations. The Judiciary should continue to collect and share data regarding this category of cases. Action by the Legislature to amend the CJRA as to repeated rearrests could also have an effect on the prior changes to the statute related to Graves Act Offenses.

5. Disparity Concerns

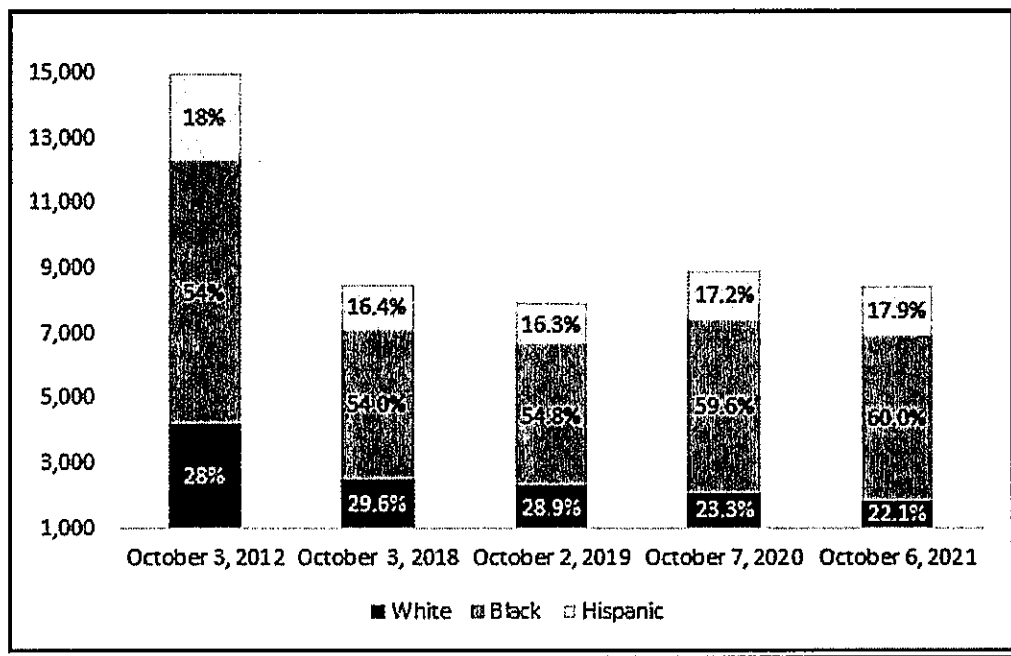
The percentage of jail inmates identified as Black has continued to increase, even since implementation of initial CJR reforms.³⁵ On October 3, 2012, New Jersey

³⁵ The U.S. Census Bureau enables individuals to self-identify as Hispanic or Non-Hispanic, for ethnicity, as well as one or more racial categories, including Black and White. In contrast, New Jersey county jails use Hispanic as one racial category among others, including Black and White, meaning that jail data classifies inmates

county jails classified 54% of inmates as Black. Eight years later, in October 2020, jail data showed that Black inmates comprised 59.6% of the jail population.³⁶ In contrast, although 63.5% of New Jersey’s population self-identifies as White, as of October 6, 2021, jails classified only 22.1% of the inmate population as White.

Fig. 33

Jail Population by Race



The Subcommittee discussed the complex societal issues related to racial disparity in the criminal justice system, and the continued efforts underway by all stakeholders to support fair treatment of defendants at each phase of the criminal justice process. The Subcommittee also discussed whether and how PSA scoring

as either Hispanic or Black or White. This difference in data categories complicates analysis and precludes a one-to-one comparison with U.S. Census data.

³⁶ As of October 6, 2021, jails reported 17.9% of the inmate population as Hispanic. As noted in the preceding footnote, jail demographic categories prevent precise comparison against U.S. Census data.

78x

might be improved to reduce racial disparity while increasing predictive accuracy. The Subcommittee recommended continued exploration of the timeframes for failures to appear and prior convictions, the use of age as a factor, and consideration of temporary restraining order data to improve accuracy of the new violent criminal activity scale.

- *Subcommittee Recommendation -- Research on Racial Disparity*

RECOMMENDATION 31:

- The Judiciary should engage in continued, comprehensive research, utilizing New Jersey data, to improve both the predictive accuracy of the PSA and minimize any racial disparities.

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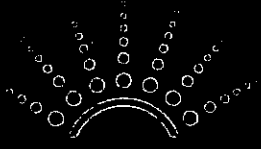
APPENDIX A

THE CRIMINAL JUSTICE REFORM LINKS TO USEFUL MATERIALS

TITLE:	DESCRIPTION:	LINK:
AG Directive 2016-6 v3.0	Modification of Directive Establishing Interim Policies, Practices, and Procedures to Implement Criminal Justice Reform Pursuant to <u>P.L. 2015, c.31</u>	<u>ag-directive-2016-6 v3-0.pdf (nj.gov)</u>
Decision Making Framework August 2022	Revised August 2, 2022 Addition of Step 3 -- Graves Act	<u>Decision Making Framework - Revised August 2, 2022 (njcourts.gov)</u>
Criminal Justice Reform: Directive #08-22	Criminal Justice Reform: (1) Amended by <u>P.L. 2022, c. 43</u> to Address Graves Act Offenses; (2) Amendments to Court Rule 3:4A(b)(5); (3) Changes to Decision-Making Framework (DMF)	<u>Directive #08-22 - Criminal Justice Reform - (1) Amended by P.L. 2022, c. 43 to Address Graves Act Offenses; (2) Amendments to Court Rule 3:4A(b)(5); Changes to the Decision-Making Framework (DMF) (njcourts.gov)</u>
Directive #15-19 (Supersedes #07-18)	Criminal Justice Reform: Promulgation of the Updated Written Protocol for Issuing an After-Hours Bench	<u>Administrative Directive #07-18 – Criminal Justice Reform - After-Hour Bench Warrant for a Violation</u>

86x

	Warrant for a Violation of Electronic Monitoring Conditions	<u>of Pretrial Release Electronic Monitoring Conditions.</u> (njcourts.gov)
<u>P.L. 2023, c. 46</u>	Clarifies penalties for certain violations of pretrial release; directs prosecutor to provide written notice of release to victim	<u>1463 I1.PDF</u> (state.nj.us)
Annual Reports to the Governor and the Legislature for 2017 to 2022	Annual Reports	<u>CJR - Annual Report to the Governor and the Legislature</u> (njcourts.gov)
Prisoner Reentry Program: December 21, 2021	An act concerning services for certain inmates and amending and supplementing various parts of the statutory law. Expands scope of inmate reentry assistance.	<u>NJ Legislature</u> (state.nj.us)



**NJ REENTRY
CORPORATION**

PREENTRY BEHAVIOR

A Research Examination of Best Practices



**New Jersey Reentry Corporation
591 Summit Ave, Jersey City, NJ 07306**

**This report was researched and drafted by the Legal Research and Writing Team,
led by Danielle Bitar and composed of Antonio DiMeglio, Ryan Estes,
Matthew Harper, Deborah Klebansky, and Marc Nault.**

83x

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BRIAN P. STACK
SENATOR, 33RD DISTRICT
411 PALISADE AVENUE
JERSEY CITY, NJ 07307

TEL. (201) 721-5263
FAX (201) 721-5986
SenStack@njleg.org

COMMITTEES:
CHAIR - JUDICIARY
MEMBER - COMMUNITY AND URBAN AFFAIRS

January 4, 2023

Dear fellow New Jerseyan,

When Criminal Justice Reform was passed in 2017, the purpose was to reduce the reliance upon cash bail as a means of determining who would be released, and instead, evaluate the risk of repeat offending and of flight. Governor Christie originally envisioned that bail reform would largely be based upon the federal system which provides for rational release while providing a comprehensive set of services to maximize the individual's success during the time of pre-entry.

While New Jersey took the critical step in addressing the deficiencies of the pretrial system, it did not address the needs of both individuals and the community in providing for an integrated pre-entry services plan. The need for the court, prosecutors, and defense counsel to work together for the common good must be augmented by providing the court-involved person with the resources necessary to address medical and behavioral needs, legal challenges, housing, and employment and training.

To begin the process of changing behaviors, even during the relative succinct period following arrest and before sentencing, requires a sequenced structure of services. As such, in providing those services, a person's behavior has the prospect of remediation and improvement, and the community is safer. Working collaboratively with the courts and counsel, the service provider can more fully assess the success and/or failure of the court-involved person to abide by responsible behavior.

As a mayor, I am also committed to the safety and security of the community which I serve. Persons revolved through the criminal justice system while exhibiting violent behavior undermines both the person and the well-being of our families. Needed pre-entry services, responsible and timely reporting, accurate assessments of medical and behavioral health, the provision of legal services to address past fines and warrants, and securing industry-recognized credentials for skill-based employment are each critically valuable to the court-involved person.

This report and the recommendations contained are common sense. The legislation, which is an outgrowth of this report, seeks to provide a well-sequenced array of comprehensive services for individuals to better manage life's challenges, while providing the community with greater assurance of responsible, lawful behavior.

I look forward to discussing these recommendations with the Governor's Office, fellow members of the Legislature, and the public as we move forward together.

Respectfully,

Brian P. Stack
Mayor of Union City/Senator-33rd District



NEW JERSEY GENERAL ASSEMBLY

ASSEMBLYMAN RAJ MUKHERJI, ESQ.
DEPUTY SPEAKER

33RD LEGISLATIVE DISTRICT (HUDSON COUNTY)

COMMITTEES

JUDICIARY (*CHAIR*)
APPROPRIATIONS (*VICE CHAIR*)
BUDGET

Mailing:
PO BOX 1, JERSEY CITY, NJ 07303

District Office:
433 PALISADE AVENUE, JERSEY CITY, NJ 07307

TEL: (201) 626-4000

FAX: (201) 626-4001

E-MAIL: ASMMUKHERJI@NJLEG.ORG

[FACEBOOK.COM/MUKHERJI](https://www.facebook.com/mukherji)

TWITTER: [@RAJMUKHERJI](https://twitter.com/RAJMUKHERJI)

INSTAGRAM: [@RAJMUKHERJI](https://www.instagram.com/RAJMUKHERJI)

January 18, 2023

Dear Fellow New Jerseyan:

It is crucial to recognize the unique role and opportunity of the pretrial period in the criminal justice process. Although other stages, such as the custodial term and post-release reentry, understandably play a critical and well-recognized role that have been the focus of legislative reform efforts in numerous jurisdictions, further attention must be devoted to the period during which a defendant is arrested and awaiting trial or sentencing.

When our state eliminated cash bail in favor of a risk-based system several years ago, New Jersey took a measurable step forward in addressing deficiencies and needs of the pretrial system, which did not sufficiently ensure public safety given the system's inability to decide the need for pretrial incarceration on the basis of risk. Indeed, the previous cash bail system resulted in myriad accused persons (disproportionately defendants of color) being detained simply because of poverty. Although significant improvements were made through enactment of the Criminal Justice Reform Act, many challenges remain that should be addressed in order to institute a bail system in New Jersey that helps the defendants themselves, the criminal justice system, and the citizenry.

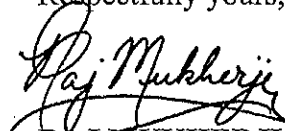
Presently, no comprehensive diagnostic screening process exists. Further, integrated services are not provided that would provide a biopsychosocial assessment, treatment for substance abuse disorder, treatment for mental health issues, and medical care, legal counsel unrelated to criminal defense, identification (e.g., driver's licenses or birth certificates), housing, job training, and employment referrals. If defendants are released into the community while awaiting trial without any supportive services and their needs remain unmet, they are more likely to return to the same environment that first led to justice system involvement and recidivate.

86x

The within report underscores the importance of robust, integrated pretrial services in the criminal justice system. As the report succinctly states in its Executive Summary, “Recidivism decreases and court appearance rates increase when pretrial services agencies employ a screening process to identify a defendant’s needs and provide services to address those needs. The services and treatment programs target underlying issues that contribute to the risk a defendant poses while out on pretrial release.”

New Jersey needs to recognize the opportunity available during this pretrial period to constructively provide services, demonstrate the benefits of the judicial system to the court-involved person, and begin to foster healthy behaviors for the long-term benefit of defendants. I am grateful to the New Jersey Reentry Corporation for their efforts and for their service to vulnerable populations in our community.

Respectfully yours,



RAJ MUKHERJI

Executive Summary

In 2017, the Criminal Justice Reform Act (CJR), New Jersey's most comprehensive bail reform initiative to date, replaced the antiquated monetary bail system with a risk-based approach to bail. Under this new framework, courts consider risk factors relevant to whether a defendant will fail to appear in court or pose a danger to the community when determining whether to release or detain a defendant before trial. As a result of CJR's implementation, the number of defendants detained pre-trial has decreased significantly. Nonetheless, CJR remains in its infancy and important challenges of the main concerns being the court's ability to provide access to affordable, community-based treatment programs to defendants released during the pretrial period.

Although difficulties and gaps remain during this pretrial period, the Administrative Office of the Courts (AOC) have taken substantial steps to improve the pre-entry process for defendants, such as making judicial decisions in a timely manner or using an evidence-based risk assessment tool. The New Jersey Reentry Corporation (NJRC) recognizes these important efforts and the AOC for a successful implementation of what CJR intended, namely to determine release not on a monetary basis but that of risk posed by the defendant. Nonetheless, the implementation of CJR has demonstrated that significant gaps and deficiencies remain in its structure, leaving court-involved individuals unaided at a critical juncture. In this report, in view of structural inadequacy of CJR and the admirable efforts of the AOC, NJRC intends to set forth certain evidence-based practices that will build upon, but nonetheless move beyond, the critical steps taken since 2017.

Currently, New Jersey's pretrial services agency does not have an existing framework to provide supportive services to defendants released into the community after arrest. This absence of support often has a detrimental effect since defendants may return to the same environment that drew them into court involvement. The AOC has recognized and responded to the problem that detention significantly increases the risk of recidivism. Nonetheless, a structure of sequenced services must be implemented to assist court-involved persons as they are released into the community during this pre-entry period. If minimal assistance is given, the defendant is unfortunately left at a significantly disadvantaged position.

To address the limitation that currently exists in New Jersey's pretrial operations, NJRC endorses the enclosed legislation, sponsored by Senator Brian Stack and Assembly Judiciary Chair Raj Mukherji. This legislation will establish a pilot program, in partnership with the New Jersey Courts, that will enhance pretrial practices and outcomes. This report (1) summarizes the Criminal Justice Reform Act and its effects; (2) highlights evidence-based, pretrial best practices; and (3) outlines the proposed pilot program, which would link pretrial defendants to critically needed services during the pretrial release period.

Recidivism decreases and court appearance rates increase when pretrial services agencies employ a screening process to identify a defendant's needs and provide services to address those needs. The services and treatment programs target underlying issues that contribute to the risk a defendant poses while out on pretrial release. This report summarizes exemplary pretrial practices employed in the Federal System and in other jurisdictions to illustrate how pretrial success rates improve when services are offered during the pretrial release period. The initiatives highlighted in this report are based on research regarding the factors that contribute to criminal reoffending and the methods the justice system can employ to interrupt the cycle of re-offense. NJRC hopes this report will help equip criminal justice policymakers with the requisite information and processes so that there may be measurable reductions in pretrial misconduct.

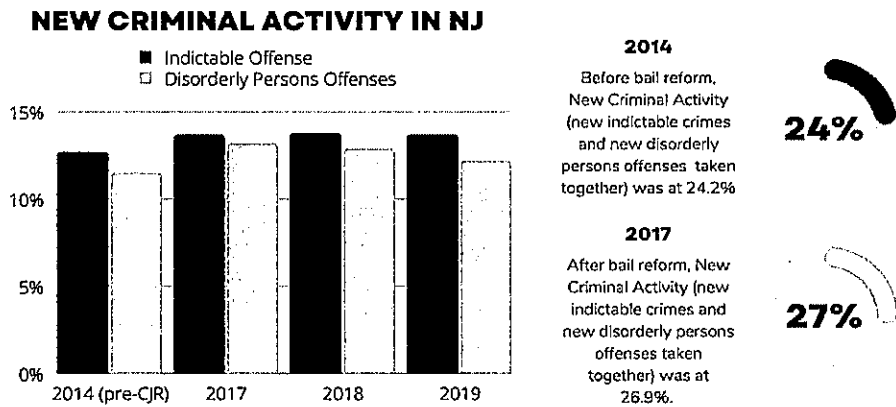
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I. Introduction

Improving pretrial justice practices and outcomes is a national priority with bipartisan support.¹ Whether the goal is to reduce unnecessary pretrial detention, minimize racial disparity, manage arrestees returning to communities, or increase pretrial success outcomes for defendants awaiting trial, there is a need for pretrial justice reforms that promote smarter, evidence-based practices.²

no longer serve as the primary method of determining release eligibility and preventing danger to the community has now become a legitimate regulatory goal.⁴ The Administrative Office of the Courts (AOC) has overseen the implementation of CJR since 2017 and has seen a decrease in the number of defendants being detained. The transfer from a metric based on ability to meet monetary bail requirements to that of a risk of reoffending or not attending court has substantially improved

WHAT CHANGES DID BAIL REFORM HAVE IN NEW JERSEY?



Measuring new indictable crimes and new disorderly persons offenses together, the rate of defendants charged with new criminal activity increased slightly from 24.2 percent in 2014 to 26.9 percent in 2017.

Source: 2018/2020 Criminal Justice Reform Report to the Governor and the Legislature

In 2017, New Jersey passed the Criminal Justice Reform Act (CJR). CJR was a transformative milestone for the state's criminal justice system because this bail reform initiative supplanted the monetary bail system. The monetary bail system resulted in the pretrial incarceration of many low-risk defendants and allowed dangerous defendants to pay their way out of jail.³ The legislature recognized the inadequacies perpetuated by monetary bail and implemented new laws to allow for the adoption of a risk-assessment tool to guide judges in determining release eligibility. Since CJR's implementation, financial considerations

pre-entry process for defendants. Indeed, the AOC has implemented a policy of holding hearings or rendering decisions in a highly timely manner; furthermore, the AOC has used evidence-based risk assessment tool to accurately gauge the risk posed by a defendant. NJRC acknowledges these substantial and successful efforts of the AOC to fulfill the aims of CJR.

Nonetheless, CJR remains in its infancy, and important challenges must be addressed. NJRC recognizes that the risk-based approach has led to an increase in defendants being released pretrial and that the rate of court appearance

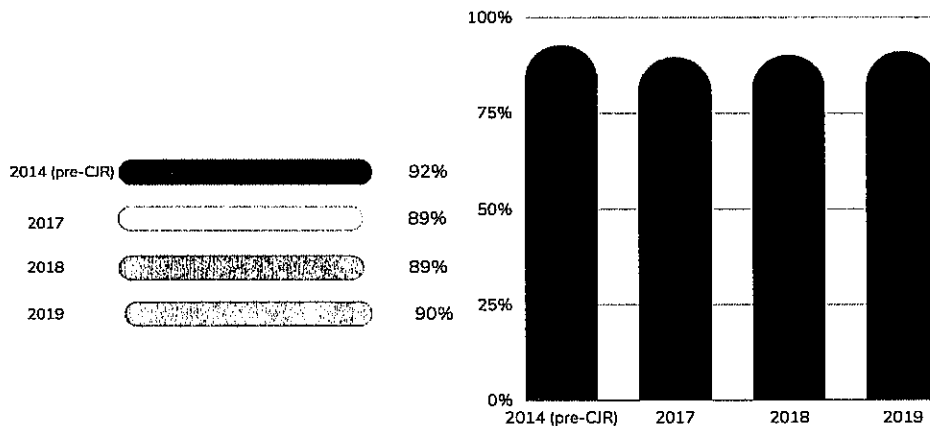
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and recidivism remained essentially the same, signifying that the release of more court-involved persons into the community did not have a detrimental effect on the criminal justice system.⁵ Given that the objective of CJR was to reform the bail system itself, there is no provision for comprehensive services provided during the pretrial release period. Defendants are often in need of support to address outstanding mental health, substance abuse, housing, or employment issues when released back into the community after arrest.⁶ In order for these individuals to be truly successful, the state needs to develop access to community-based programs that can provide the requisite

justice-involved persons. Studies have repeatedly shown that robust pretrial services increase the likelihood of a defendant's compliance with release conditions, increase court appearance rates, and lower recidivism rates.⁹ Even further, success on pretrial release increases the likelihood of success on post-conviction supervision.¹⁰ As such, effective pretrial services will not only benefit defendants and the criminal justice system in the short term but the long term as well. It is then important to recognize that CJR itself is structurally deficient, and the years since 2017 has shown that there are critical gaps in the pre-entry process, particularly the lack of robust social services.

WHAT CHANGES DID BAIL REFORM HAVE IN NEW JERSEY?

COURT APPEARANCE RATES IN NJ



Source: 2018/2020 Criminal Justice Reform Report to the Governor and the Legislature

treatment and services from which individuals in the pretrial setting would greatly benefit.⁷ As noted by the AOC, "to help ensure an eligible defendant's pretrial success, it is imperative that adequate services be made available to those on release."⁸ Yet, New Jersey's pretrial services agency does not employ a screening mechanism to identify defendants with outstanding needs in order to provide services that can ameliorate such issues. Without such a system in place, the court's ability to maximize success during the pretrial release period is limited.

As the Murphy Administration has noted, the pretrial period is a critically important stage in providing necessary resources and services to

In this report, in view of CJR and the efforts of the AOC, NJRC sets forth evidence-based practices that will build upon, but nonetheless move beyond, the critical steps taken since 2017. It is imperative that comprehensive, supportive services (e.g., addiction, mental health, housing, licenses, training and employment) be offered during the pretrial period. Implementing a pretrial services model that incorporates the most effective, evidence-based pretrial practices would lead to improved pretrial operations and outcomes in New Jersey. As such, this report details a pilot program, currently sponsored by Senator Brian Stack and Assembly Judiciary Chair Raj Mukherji in forthcoming legislation.

II. Bail Reform in New Jersey

1. Background

As a former U.S. Attorney, Governor Christie was acutely aware of the drawbacks of New Jersey's reliance on a monetary bail system.¹¹ The monetary bail system facilitated discriminatory techniques which resulted in countless individuals being detained solely because they were unable to afford bail.¹² The monetary bail system was also ineffective in distinguishing between dangerous and non-dangerous defendants.¹³ Defendants with limited financial means often could not afford even modest bail amounts¹⁴ while more affluent defendants were released, notwithstanding that they posed a significant threat to the community, victims, witnesses, and the criminal justice process.¹⁵

In response to this issue, Governor Christie predicated New Jersey's bail reform legislation, the Criminal Justice Reform Act, upon the Federal System's bail reform model. CJR aspired to negate the systemic errors inherent in a monetary bail system and place an emphasis on public safety.¹⁶ Now, after the passage of this reform legislation, the decision to release or detain a defendant prior to trial is based on an analysis of the risk the defendant poses.¹⁷ This "risk-based" analysis serves to provide assurance that the defendant will appear in court, pose no danger to the community pending trial, and will not obstruct the criminal justice process by intimidating victims and other witnesses if released.¹⁸ It is then important to recognize that CJR itself is structurally deficient, and the years since 2017 has shown that there are critical gaps in the pre-entry process, particularly the lack of robust social services.

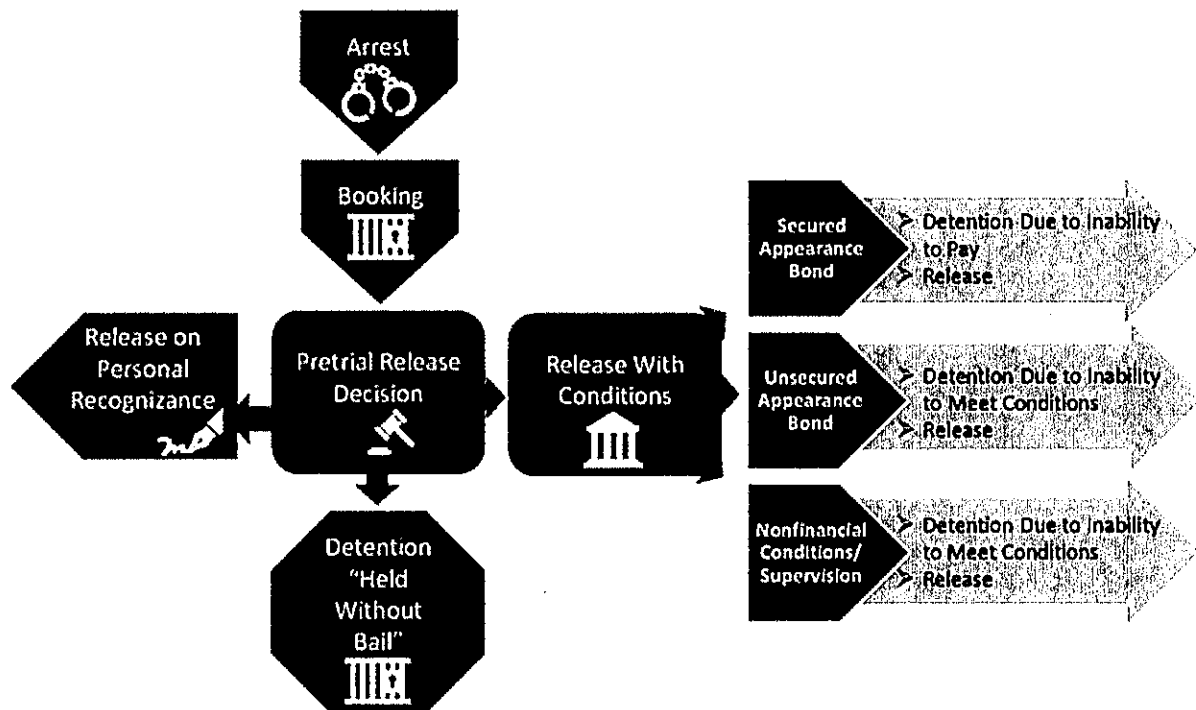
This analysis is meant to apply evenly to all defendants, regardless of the defendant's finances. These objectives are precisely what an effective bail system should aim to accomplish; since the implementation of CJR and under the guidance of the AOC, New Jersey's pretrial system has seen a significant reduction of defendants held in jail

pre-sentencing, demonstrating the success of CJR and the achievement of its objectives.¹⁹ Under the Federal System, bail reform was enacted namely (1) to address the financial inequities that the monetary bail system precipitated, (2) to place an emphasis on public safety by assessing the risk that a defendant might commit a new criminal act or fail to appear in court if released, and (3) to utilize the pretrial release period as an opportunity to promote long-term, positive change for pretrial defendants.²⁰ CJR successfully addressed the financial inequities invoked by the monetary bail system and reduce the number of persons detained during the pretrial period. CJR was indeed successful in this regard. Yet, there is still much to be done to enhance New Jersey's bail practices. Although the current risk assessment tool used by Pretrial Services effectively determines risk and embodies the intentions of CJR, it must nonetheless be enhanced to account for a wider range of factors and provide Pretrial Services with a greater breadth of information in determining release conditions. Furthermore, robust pretrial services ought to be provided to defendants upon release to improve outcomes during the pretrial release period and onward.

2. Current Pretrial Process

To understand and give a proper explain how to improve the pretrial process can be improved, it is important to detail how the process currently operates. CJR Act enumerates which arrestees will be subject to the new bail reform provisions. According to the Act, all defendants charged with a complaint-warrant, charging any indictable offense made by a private citizen, are CJR-eligible defendants.²¹ Once a defendant is issued a complaint-warrant, they are then transported to a jail, where they will remain until a judicial officer renders a release decision. A first appearance hearing is held within 24 to 48 hours of the

The Pretrial Release Process



SOURCE: Statutory Framework of Pretrial Release. <https://www.ncj.org/research/civil-and-criminal-justice/the-statutory-framework-of-pretrial-release.aspx>.

defendant's commitment to jail.²² The first appearance hearing is held so that a judicial officer can render a release decision.²³ Unless the prosecutor files a motion for detention, the court must release the defendant.²⁴ A judicial officer makes the initial pretrial release or detention decision after considering the representations of the prosecutor and the defense attorney, as well as the information provided by the pretrial services officer.²⁵ In New Jersey, there is a legal presumption of release on the least restrictive terms and conditions, with an emphasis on non-financial terms, unless the court determines that no condition or combination of conditions will reasonably assure the appearance of the defendant in court and the safety of the community.²⁶

To help facilitate the pretrial release determination process, CJR instituted a pretrial services agency tasked with creating reports that highlight whether a defendant poses a risk to community safety or risk of flight if released. The report created by a pretrial services officer recommends whether release conditions and pretrial monitoring should be imposed on a defendant. Mandating supervision or compliance with conditions of release typically occurs when a defendant presents

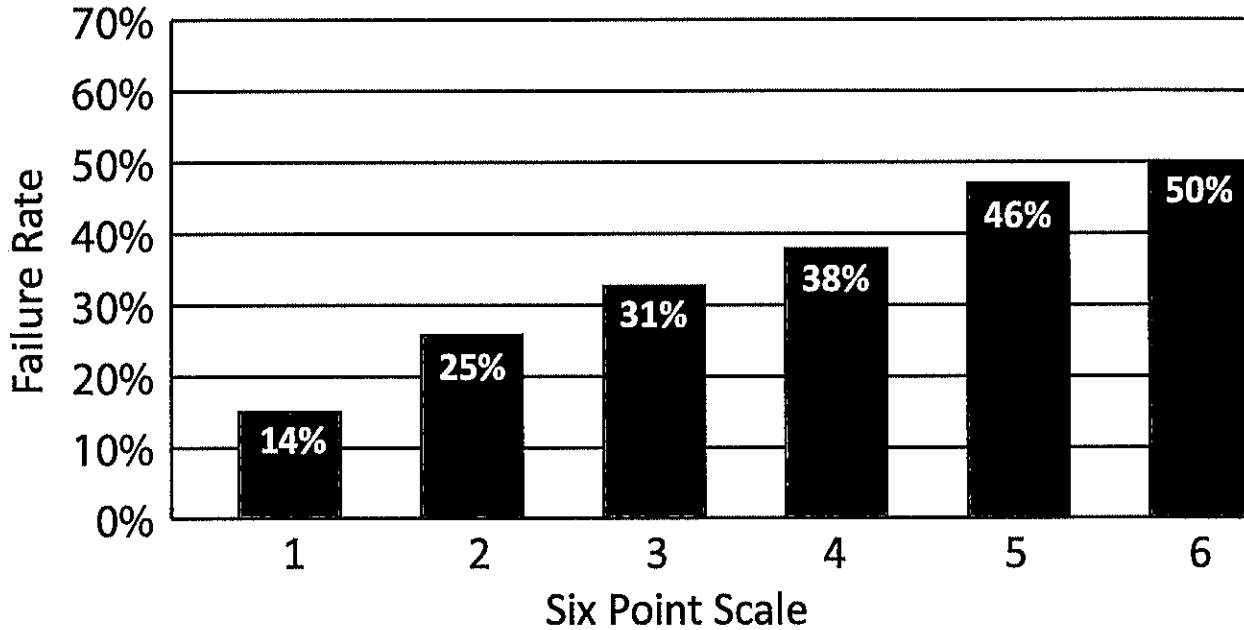
a risk of failing to appear in court when required or a risk of committing new criminal activity if released.²⁸ New Jersey adopted the Laura and John Arnold Foundation's pretrial risk assessment and designed a Decision-Making Framework to inform the court's pretrial release decision.²⁹ Pretrial Services uses these objective risk measurement tools, the results of which inform the recommendations made in the pretrial services report.³⁰ After the completion of this report, Pretrial Services' release recommendations are presented to a judicial officer. The judicial officer will consider the recommendations contained within the report before any release or detention decision is made.

The Public Safety Assessment (PSA), which is administered to every CJR-eligible defendant, is an actuarial risk assessment tool designed to calculate the potential risk a defendant poses by using factors shown empirically to be related to risk.³¹ The PSA is limited in the information it obtains about the defendant. Using only the information that is on record with the courts,³² the PSA considers nine risk factors:

- (1) age at current offense;
- (2) current violent offense;

- (3) pending charge at time of offense;
- (4) prior misdemeanor conviction;
- (5) prior felony conviction;
- (6) prior violent conviction;
- (7) prior failure to appear in the past two years;
- (8) prior failure to appear older than two years; and
- (9) prior sentence to incarceration.³³

New Criminal Activity



SOURCE: New Jersey Pretrial Justice Manual at 9, (2016), <https://www.nacdli.org/getattachment/50e0c53b-6641-4479-bb49-c733de139e37/the-new-jersey-pretrial-justice-manual.pdf>.

The PSA uses the aforementioned risk factors to predict the likelihood that an individual will commit a new crime or fail to appear for a court hearing if released before trial.³⁴

The failure rate in the New Criminal Activity scale corresponds to the likelihood that the individual, if released, will be arrested for a new crime while the current case is pending. A score of one reflects a 14% chance that the defendant will be re-arrested; a score of two corresponds with a 25% failure rate; three reflects a 31% failure rate; four yields a 38% chance of new criminal activity; a defendant who scores a five has a 46% failure rate; when a defendant scores a six, the PSA predicts a 50% chance of criminal recidivism while on pretrial release.

Each point on the six-point Failure to Appear scale corresponds to a different failure rate as

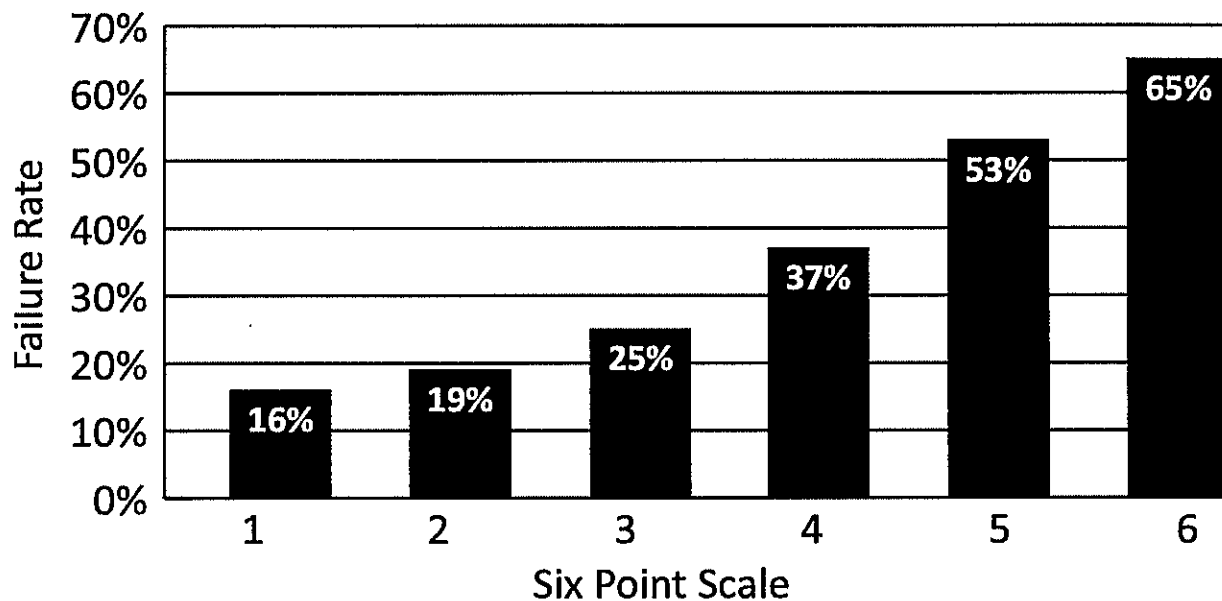
shown in the chart above. A defendant who scores a one has, statistically, a 16% chance of failing to appear for his or her court date. A score of two corresponds to a failure to appear rate of 19%; a score of three yields a 25% failure rate; four reflects a 37% failure rate; a defendant with a score of five has a predicted failure rate of 53%; and a defendant at the top of the scale, with six points, corresponds to a 65% failure rate.

In recognition that CJR was not intended to address such factors, the PSA does not consider mental health or substance abuse issues, community ties, current or past employment, or housing status. Following the PSA, Pretrial Services then use the Decision-Making Framework (DMF) to assign the defendant to a risk category.³⁷ The DMF matrix prescribes which pretrial monitoring level (PML) a defendant should receive,³⁸ but the court retains ultimate discretion to decide what

risk category to assign the defendant.³⁹ The DMF considers factors such as current charge(s) and the defendant's age to determine the risk-level classification, and there are multiple conditions that necessitate an automatic no-release recommendation.⁴⁰ If any one of the conditions enumerated below are present, the compulsory recommendation is for no release:

offenses under the Graves Act and crimes involving deadly weapons also have restrictive recommendation guidelines, but these offenses may not necessitate an automatic no-release recommendation.⁴⁵ Pretrial Services considers the results of the DMF in conjunction with the PSA results to provide an appropriate release recommendation.

Failure to Appear



SOURCE: New Jersey Pretrial Justice Manual at 8. (2016). <https://www.nacdl.org/getattachment/50e0c53b-6641-4a79-8b49-c733de03e377/the-new-jersey-pretrial-justice-manual.pdf>.

(1) the current charge is subject to life imprisonment (e.g., human trafficking)⁴¹;
 (2) the PSA generates a level 6, the highest risk classification, on the "Failure to Appear" or "New Criminal Activity" scale;
 (3) the current charge is violent and there is a flag for risk of committing new violent criminal activity (e.g., sexual assault)⁴²; or
 (4) the defendant has previously been arrested on two separate occasions and those charges were still pending at the time of the current offense.⁴³

Based on the results of the PSA and the DMF, Pretrial Services recommends to the court the least restrictive means for managing the defendant's risk and delineates whether certain conditions (e.g., monitoring) should be imposed on the defendant upon release. Courts are authorized to release defendants on any condition that achieves the purposes listed in the CJR statute – ensuring a defendant's presence in court, protection of the public, and prevention of obstruction of justice.⁴⁶ Examples of conditions that may be imposed include:

Furthermore, the crime of escape and the equivalent of three of the "Violent Crime Index" offenses (murder, rape, and robbery) also automatically result in a no-release recommendation, regardless of the defendant's PSA risk results.⁴⁴ Individuals charged with

- Report on a regular basis to a designated law enforcement agency, or other agency, or pretrial services program;
- Refrain from excessive use of alcohol, or

any use of a narcotic drug or other controlled substance without a prescription by a licensed medical practitioner;

- Maintain employment, or, if unemployed, actively seek employment;
- Maintain or commence an educational program undergo available medical, psychological, or psychiatric treatment, including treatment for drug or alcohol dependency, and remain in a specified institution if required for that purpose.⁴⁷

Of course, even though the PSA and DMF are valuable decision-making tools for judges and

pretrial personnel, they do not replace judicial discretion. Judges still retain full discretion as to the specific conditions attached to a defendant's release eligibility.⁴⁸ "Judges continue to be the stewards of our judicial system and the ultimate arbiters of the conditions that should apply to each defendant."⁴⁹ While the procedures highlighted above are in place to guide release determinations, there are several evidence-based decision-making tools that are not currently being utilized by Pretrial Services.

III. Opportunities to Enhance New Jersey's Pretrial Release System

"The pretrial release decision, to release or detain a defendant pending trial and the setting of terms and conditions of release, is a monumental [decision] that carries enormous consequences not only for the pretrial defendant but also for the safety of the community, the integrity of the judicial process, and the utilization of our often-overtaxed criminal justice resources."⁵⁰ With the implementation of CJR, the goal was to decrease pretrial detention rates and, in turn, provide individuals accused of a crime with the opportunity to continue the conduct of their lives as they prepare for trial: working, being with their families, and receiving physical and behavioral health treatment. In view of this objective, AOC was successful in the implementation of CJR. Yet, NJRC reiterates that CJR was structurally deficient and did not fully address the needs of defendants during the pretrial period. Indeed, it is clear that there are numerous ways in which to enhance and further improve the significant amount of work that CJR has already achieved in the few years since its passage. The decrease in pretrial detention must be coupled with offering meaningful services to defendants with outstanding needs. Providing such resources to

defendants who need them is an effective risk mitigation strategy that will have positive implications for the criminal justice system and the community at large.⁵¹ When releasing pretrial defendants into the community, oftentimes the same environment and circumstances, access to pre-entry resources and services will serve as a critical opportunity for the judicial system to intervene in the criminal justice process.

Given the integral role that pretrial services agencies play in the administration of pretrial justice, the pretrial services field is actively engaged in developing evidence-based practices to enhance pretrial services' operations and outcomes. Courts should continue evaluating their pretrial procedures and look for opportunities to enhance their pretrial risk assessment and supervision strategies, since the research on pretrial justice is still ongoing. Below, we highlight how New Jersey's pretrial practices can be enhanced based on the recommendations enumerated in the current literature and research on evidence-based practices in the pretrial setting.

PRETRIAL SERVICES AGENCY BEST PRACTICES

Conduct Comprehensive Investigations

Interviews defendants to obtain background information such as family/community ties, employment, education, finances, physical and mental health, and alcohol or drug abuse. Conducts criminal history and court record checks.

Prepare Reports for the Court

Officers prepare reports that the court relies on to make informed release decisions. Officer recommendations include release conditions for the court to impose, which are tailored to the needs of the individual defendant.

Supervise Defendants in the Community

Officers monitor defendants and make sure they comply with the release conditions set by the court and address any issues that affect their ability to comply.

Offer Help to Persons Under Supervision

Officers play a dual role, part law enforcement and part social work. They direct individuals under supervision to services to help them, such as substance abuse/mental health treatment, medical care, training, employment assistance, legal services, and/or social services.



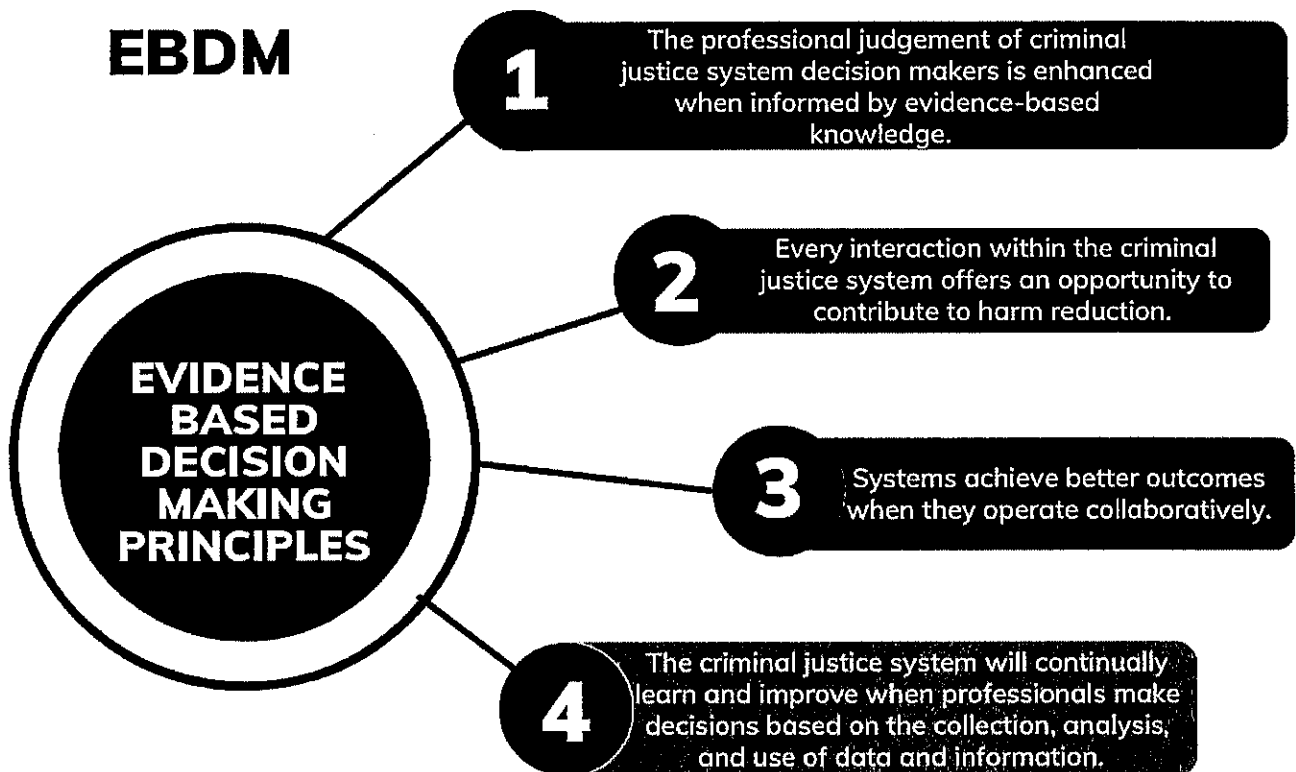
Elements not included in NJ Risk Assessment:

1. No in-person interview
2. No comprehensive employment history taken
3. No substance abuse screening
4. No mental health/medical evaluation screening
5. No review of community ties with defendant's family members, associates, employers

1. Best Practices: Universal Screening

Bail reform initiatives aim particularly to increase the number of those on release while simultaneously maximizing court appearance and public safety.⁵² To achieve this goal, high functioning pretrial systems must use risk-based decision-making (RBDM) to determine whether to release or detain defendants prior to trial. RBDM requires that pretrial services agencies employ universal screenings of all defendants eligible for release consideration, prior to the defendant's initial court appearance.⁵³ Such screenings allow pretrial services officers to make "informed, individualized, risk-based recommendations to the court regarding release, supervision, and detention decisions."⁵⁴ Judicial officers often rely on screening results to come to the most appropriate release decision one that will maintain public safety and high levels of court appearance.⁵⁵

The results from these screenings also help to determine whether the defendant is eligible for pretrial diversion or whether the defendant should be referred to social services programs or behavioral health treatment to enhance the efficacy of pretrial supervision.⁵⁷ Offering services during the pretrial release period provides greatly needed assistance to court-involved individuals, increases the likelihood of compliance with conditions of release, and helps to ensure public safety for the community.⁵⁸ Yet, to offer meaningful services, an individual's needs must first be identified. New Jersey's pretrial system relies on the use of the PSA to determine the risk that a given defendant will not renege on court commitments or commit new criminal activity upon release. As mentioned earlier, the PSA allows pretrial services officers to create a risk profile of the

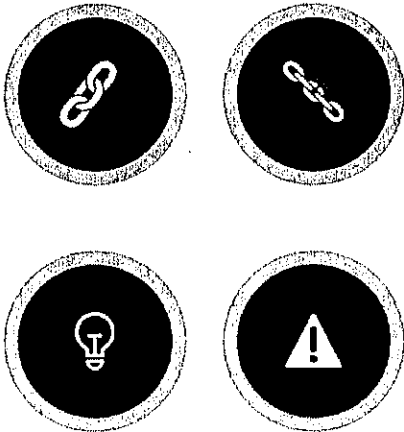


Source: A Guide for Pretrial Executives. <https://info.nicic.gov/ebdm/sites/info.nicic.gov/ebdm/files/ebdm-users-guide-pretrial.pdf>.

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ABA and NAPSA Standards on Pretrial Release

Standard 1-1.0 of ABA
Standard 3.5 of NAPSA



PROVIDING ACCESS TO SUPPORTIVE SERVICES

Helping defendants obtain employment as well as any services (e.g., mental health or substance use disorder treatment, legal services), that may increase their ability to successfully comply with conditions of release

defendant based on the nature of the present charge and the defendant's criminal and court-appearance history. However, despite the necessary criminogenic information that the PSA provides, the assessment does not account for all relevant background information that could be indicative of a risk to public safety or risk of non-appearance in court.

The Attorney General's Office noted that "because the pretrial risk-assessment process approved by the AOC [the Administrative Office of the Courts] depends on the general nature of the present charge and defendant's adult New Jersey criminal conviction and court-appearance history, it may not account for all relevant facts and circumstances pertaining to the defendant."⁵⁹ The PSA is limited to collecting information about static risk factors (e.g., prior offense) - "features of a person's history that are used to predict recidivism but cannot be changed and are not amenable to deliberate intervention."⁶⁰ What is lacking from the current

system is an assessment that also considers dynamic risk factors, which are potentially adjustable factors, such as substance abuse, unemployment, homelessness, and mental illness.⁶¹ Studies have demonstrated that "substance misuse, mental health, and homelessness [are] strongly correlated with court appearance rates."⁶² This statistical relationship is highly significant because once a need is found to be predictive of a specific risk, there is a strong incentive to identify the potential risk factor when screening defendants at intake.⁶³ Furthermore, the American Bar Association (ABA), Department Of Corrections (DOC), and National Association of Pretrial Services Agency (NAPSA) standards stress the need for a screening process during the pretrial period to identify mental health issues, housing issues, employment issues, and other barriers to re-integration.⁶⁴

Pretrial screenings should also include a "needs" assessment that is administered alongside or

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incorporated into the validated risk assessment tool. Prosecutors, defense attorneys, and judges will use this information to determine whether pretrial release is appropriate and to identify individualized risk reduction strategies for released defendants. The information obtained from these assessments can include, but is not limited to:

- (1) the history and characteristics of the person, including the person’s character, physical and mental condition;
- (2) family ties; (3) employment;
- (4) financial resources;



SOURCE: <https://books.google.com/books?hl=en&pr=&id=dWovDgAAQBAJ&pol=fr&pg=PP1&pd-q=psychosocial+assessment+best+practices&points=g2InFQZECFU&sig=PvV1GvmAn-oLQVjPmInjcnBM9nJQ#v=onepage&q&print=true>

- (5) length of residence in the community;
- (6) community ties;
- (7) past conduct, history relating to drug or alcohol abuse;
- (8) criminal history;
- (9) record concerning appearance at court proceedings.

While actuarial risk assessment tools are, by consensus, the best method to gauge the likelihood of future pretrial misconduct, these tools cannot foresee every possible scenario.⁶⁶ For some defendants, other factors than those used in the risk assessment—for example,

substance use disorder or addiction, need for mental health services, housing requirements, or other specific factors that might impede future court appearance—may be significant mitigating or aggravating considerations to the pretrial services agency’s recommendation and the court’s bail decision. To address these instances, pretrial services agencies should adopt an adjusted actuarial approach when drafting release recommendations.

Under the adjusted actuarial approach, after conducting an assessment that demonstrates the dynamic needs a defendant may be facing, staff may incorporate these results into their release recommendations, alongside the actuarial risk assessment results. The needs assessment will help an officer “identify appropriate circumstances where staff may override a risk level recommendation for lesser or greater levels of supervision.”⁶⁷ Recommendations that deviate from the risk assessment results may only occur in limited and clearly defined circumstances and they should stem from a list of pre-selected considerations, such as substance use disorder, which can raise or lower the assessed level of risk. This approach allows pretrial services to create more accurate release recommendations based on a wider-encompassing array of factors that affect an individual’s risk

score. For example, factors such as mental illness, homelessness, and addiction may affect the likelihood that a defendant will pose a threat to public safety if released.⁶⁸ Thus, considering these factors in addition to an individual’s criminal history record can enhance the court’s ability to identify and mitigate risk. A needs assessment in the pretrial screening process would both identify risk and identify the intensive services that are necessary to address the underlying issue and deter the individual from crime.⁶⁹

Furthermore, although objective actuarial risk assessment tools were designed to be race and gender-neutral, and hence thought to reduce

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racial bias in the justice system, studies show that factors considered in the assessment are not immune from racial bias. "For example, when past criminal history is given more weight in a risk assessment, and mitigating factors such as those gained through interviews are not included, racial differences in risk assessment scoring could become more pronounced."⁷⁰ Such embedded biases have significant downstream consequences for defendants and their communities.⁷¹ While reliance on actuarial risk assessments may reduce disparate treatment when compared to unmitigated judicial discretion – which could prompt implicit bias – subjectivity within the courtroom is also important.⁷² As such, pretrial screenings should typically also include an interview of every eligible defendant and a verification process that helps to ensure the information given in the interview is accurate.⁷³ Relevant information is provided during this process, such as background information that may serve as context to the results of a risk assessment instrument or a defendant's arrest record. Information obtained during an interview may also help identify opportunities for enrollment in diversion programs or problem-solving courts.⁷⁴ Also, the investigation and verification process could reveal information that would indicate a heightened level of risk, including the identification of a dynamic risk factor mentioned above.

Because defendants are oftentimes in need of support for outstanding mental health, housing, or substance abuse issues, in order for these individuals to be truly successful while on pretrial release, the state needs to develop access to treatment programs and services that can address the underlying issues they face.⁷⁵ Employing a screening mechanism allows courts to identify individuals in need of services and refer them to such services in an attempt to correct their behavior at the earliest intervention point in the criminal justice process.⁷⁶ Furthermore, considering the dynamic needs of a defendant will not supplant the objectivity of the PSA. The revised factors will enhance objectivity since pretrial services officers will be able to ascertain indispensable information

about each defendant to create a suitable and comprehensive recommendation. "Using a standardized risk assessment tool has added objectivity to the process, but bail investigators must still make important judgments about aggravating, mitigating or changing circumstances [not present in the actuarial risk assessment]."⁷⁷ Conducting an individualized assessment that considers both criminogenic risk factors and dynamic needs factors allows the court to make a more accurate, fully informed pretrial release decision that will best serve the interests of justice and public safety.⁷⁸

"A number of jurisdictions report having significant numbers of mentally disabled persons (some of whom also abuse drugs or alcohol) in their justice systems. Many of these individuals could be released from jail before trial if judicial officers responsible for the release/detention decision had reliable information about the nature and extent of their problems, and if adequate mechanisms were available to supervise defendants in the community and provide them with needed services."⁷⁹

Sheriff Shaun Golden (Monmouth County) says while bail reform has worked to some extent, the problem truly lies with the addiction or psychological illness that someone may have. "Are they receiving the care that they otherwise would have if they were awaiting bail or trial for days or maybe weeks?" "...there's not even an opportunity for them to seek those kinds of services out [when released pretrial]." He points out that while Bail Reform has its place, there's a gap that needs to be filled by screening the offenders and making sure they have the necessary resources to get and stay clean.⁸⁰

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2. Wrap-Around Services and Whole Person Care

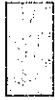
Another goal in pretrial decision-making is to reduce risk as much as possible when making release determinations. In coming to a pretrial release decision, the judicial officer should assign the least restrictive condition(s) of release that will reasonably ensure a defendant's attendance at court proceedings and will protect the community, victims, witnesses, or any other person.⁸¹ Pretrial services must assess the differing risk management options and determine which strategy to employ to manage risk most effectively.⁸² These methods can include "rejecting" the risk (applying pretrial detention for defendants with unacceptable risk levels) or finding specific ways to reduce the risk (for example, heightened levels of pretrial supervision).⁸³ Pretrial services agencies often provide supervision of defendants released pending trial and conditions of release can be imposed alongside supervision. Conditions of release can relate to:

- (1) Employment;
- (2) education;
- (3) restrictions on travel, residence, and associations;
- (4) prohibition of use of alcohol or other drugs; (5) requirement to undergo medical, psychological, or psychiatric treatment;
- (6) and other conditions deemed appropriate by a judicial officer.⁸⁴

According to NAPSA, pretrial services agencies should utilize the pretrial release period as an opportunity to control and correct the behavior of persons re-entering society after arrest.⁸⁵ Pretrial services officers can intervene with a variety of strategies aimed at maximizing defendant success during the period of supervision and ensuring that these individuals comply with the conditions of their release.⁸⁶ As part of risk control—and by order of the court—officers may direct defendants to services and mandate enrollment in treatment programs, including substance abuse or mental health treatment, medical care, training, or employment

assistance.⁸⁷ Pretrial services agencies should offer services when they help achieve positive pretrial outcomes and when they are tied to a specific risk factor the defendant exhibits. In determining the appropriate type of services to be offered, agencies should employ evidence-informed and validated needs assessment tools. Agencies should also consider how long a defendant will be supervised during the pretrial period to best understand what needs outcomes can be expected during that time.

Individuals in the justice system experience significantly higher rates of health, social, and economic issues than the general population.⁸⁸ Court-involved persons have much higher rates of substance abuse than the general population, and the ongoing opioid epidemic is increasing this disparity. On average, between 70 and 80 percent of incarcerated individuals have a Substance Use Disorder (SUD), and 80 percent of inmates who have a SUD were under the influence when they committed their crime.⁸⁹ Addiction to opioids, particularly fentanyl, has significantly increased in recent years in the State of New Jersey. Over the course of six years, from 2015 to 2020, over 15,314 individuals died due to drug overdoses. New Jersey suffered 2,849 total overdose deaths in 2022⁹⁰—an increase of 80 percent from 2015.⁹¹ Not only has this epidemic caused significant death throughout the United States but it has been particularly pronounced in our state. Provisional data from the CDC reports that New Jersey had the highest annual percentage increase in overdose deaths in the nation as of November 2017,⁹² and from January 2017, to January 2018, annual counts of overdose deaths increased by a projected 21.1 percent, compared to an overall national increase of only 6.6 percent.⁹³ Upon release, the risk of overdose death for the previously incarcerated is approximately 130 times greater than that of the general population. Many reentry clients die within weeks of re-joining the community.⁹⁴ There is also a significant risk that pretrial defendants can relapse when released into the community after arrest, if they are



Pretrial Defendant Needs



01

MENTAL HEALTH

"In 2005, the Bureau of Justice Statistics reported that 64% of people held in jails had a mental health problem"



02

CO-OCCURRING DISORDER

"In the criminal legal context, one study indicates that a quarter (24.4%) of people held in prison and jails have both a substance use disorder and a co-occurring mental health problem"



03

SUBSTANCE USE DISORDER (SUD)

"One study indicates that people held in prison and jails are 7x likelier than people in the general population to have a SUD"

The Prison Policy Institute found that in 2017, over half of people arrested multiple times reported a SUD in the past year



04

EDUCATION & HEALTHCARE

"One national survey of people arrested and jailed found that in 2017, 66% of people with multiple arrests had no more than a high school education"

"A 2017 national report found that people arrested and jailed over 3 times were more likely to be uninsured (27%) compared to those with no arrests in the past year"



SOURCE: IDENTIFYING AND ADDRESSING PRETRIAL NEEDS (OCTOBER 2021). [HTTPS://WWW.NYCJA.ORG/ASSETS/DOWNLOADS/FACT-SHEET-9.PDF](https://www.nycja.org/assets/downloads/fact-sheet-9.pdf)

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released without access to proper services.

Court-involved persons also have much higher rates of mental health and physical health issues than the general population. Only 36 percent of jail inmates do not indicate any mental health problem, while 44.3 percent have been informed by a mental health professional that they have a mental disorder.⁹⁵ Moreover, there is data to suggest that at least half of state and federal prisoners have or have had a chronic medical condition (Bureau of Justice Statistics, 2015). Among this population, rates of chronic physical health conditions are significantly higher than those of the general population: diabetes is at 9.0 percent compared to 6.5 percent in the general population, asthma is at 14.9 percent compared to 10.2 percent in the general population, high blood pressure is at 30.2 percent compared to 18.1 percent in the general population, cirrhosis is at 1.8 percent compared to 0.2 percent in the general population, and many others. The same is true of infectious diseases. Without access to mental health treatment, medical services, or health insurance upon release, pretrial defendants may experience a downward spiral that can culminate in recidivism. A recent study published by the Journal of the American Medical Association examined the impact of taking prescribed psychiatric medications on the rate of violent crimes committed by individuals released from prison (Chang et al, 2016). The study reports that several classes of psychiatric medications were associated with markedly lower rates of violent re-offense. Individuals taking their prescribed antipsychotics or their prescribed addiction treatment medications, for instance, were about 35 percent and 44 percent respectively less likely to commit a violent re-offense than those who were not taking their prescribed medications (Chang et al., 2016). Thus, especially for those suffering from mental health and substance abuse disorders, lack of access to robust and coordinated care increases recidivism considerably. Providing this population with comprehensive, ongoing care will improve health, reentry outcomes, and cost effectiveness.

Homelessness,⁹⁸ mental illness,⁹⁹ addiction,¹⁰⁰

and other co-existing issues¹⁰¹ have a strong association with public disorder, criminality, and increased recidivism.¹⁰² It follows that providing services that attempt to ameliorate these issues can reduce recidivism.¹⁰³ Research shows that individuals benefit from interventions and treatment services which address factors that drive their criminal activity.¹⁰⁴ Such treatment should be based on structured interventions and a development of new skills that target how a person thinks in order to change behavior. For example, helping defendants with substance disorder issues enroll in treatment during pretrial release can help prevent re-arrests related to drug or alcohol use. Providing mental health treatment and assisting with the procurement of health insurance can reduce recidivism among a subset of defendants who already exhibit much higher recidivism rates than the general population – defendants with mental disorders. Pretrial defendants dealing with mental illness recidivate at rates two to three times higher than defendants without mental illness.¹⁰⁵ Stabilizing individuals by providing them with medical services, treatment programs, connecting them to shelters, providing internet resources, and removing other legal barriers such as lost social security cards or birth certificates will help reduce recidivism rates by improving their basic living standards.¹⁰⁶

Housing, mental illness, and medical needs are also predictive factors for when individuals miss court and pretrial services should aim to remove these court appearance barriers when possible.¹⁰⁷ For example, helping homeless defendants secure housing stability during the pretrial release period can make court date notification easier and bolster the likelihood of future court appearance.¹⁰⁸ Understandably, individuals cannot prioritize court attendance if they do not have basic needs such as food, clothes, and shelter.¹⁰⁹ Programs that provide court-involved individuals with the basic needs they may be lacking consistently yield lower recidivism.¹¹⁰ Overall, offering services to pretrial released defendants increases the likelihood of a defendant's compliance with release conditions,¹¹¹ increases court appearance rates, and lowers recidivism rates.¹¹² The pretrial

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window is an opportunity for the criminal justice system to intervene and reduce contributory factors that feed into recidivism and failure to appear in court.

“Almost all of these individuals could be released and supervised in their communities—and allowed to pursue or maintain employment and participate in educational opportunities and their normal family lives—without risk of endangering their fellow citizens or fleeing from justice.

Studies have clearly shown that almost all of them could reap greater benefits from appropriate pretrial treatment or rehabilitation programs than from time in jail—and might, as a result, be less likely to end up serving long prison sentences.”

Remarks by former Attorney General Eric Holder, National Symposium on Pretrial Justice

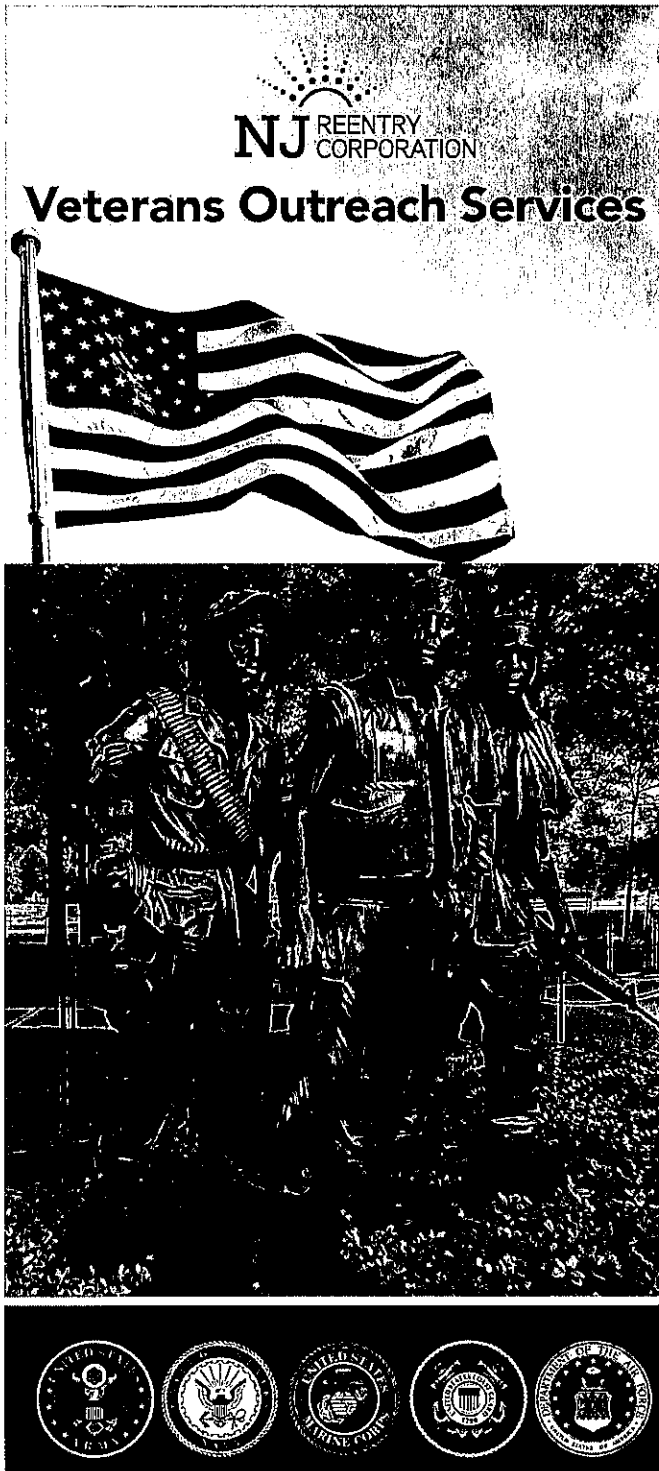
Evidently, mental health and addiction are extremely important issues that continue to plague the carceral state in New Jersey (and throughout the United States). The criminal justice system, starting from the pretrial period, must have a deep commitment to address such problems. Indeed, there is an overlapping, multi-faceted, and highly complex relationship between individual needs, unmet needs, court-appearance rates, and recidivism.¹¹³ As such, addressing the needs that impact pretrial success rates during the pretrial release period has been found to reduce recidivism, promote court appearance, and support community well-being.¹¹⁴ Given the correlation between unmet needs and pretrial outcomes, providing defendants with or referring them to interventions such as substance use disorder or mental health treatment, vocational services, or housing assistance is a necessary component of the supervision strategies employed by pretrial services.¹¹⁵ Yet, due to the limited assessment administered by New Jersey's pretrial services, defendants' issues may not be identified in the pretrial setting, creating missed opportunities to help address any existing

problems. Furthermore, courts often lack the ability to link pretrial defendants to critical services due to a lack of sufficient resources at their disposal.

Moving forward, the pretrial release process must implement certain evidence-based policies and provide particular services in order to truly meet the needs of justice-involved persons. Providing basic addiction, behavioral, and medical services will not only directly address immediate crises but provide the individual with an opportunity to learn new behaviors. The importance of pre-entry services is that it not only stabilizes the person but gives them an equal footing, perhaps for the first time in their lives, to make healthy and productive decisions.

The upshot is that without any treatment or services to address these outstanding medical and behavioral needs, people will probably engage in similar behavior. If a person's addiction is not addressed by connecting them to treatment during the pre-entry period, then there is a missed opportunity to change and improve their behavior. The ability of the justice system to rehabilitate individuals must and ought to include connecting individuals to services and resources. In this way, the criminal justice system will be taking substantial steps towards actual rehabilitation that will certainly benefit the persons themselves but also the criminal justice system at large.

3. Veterans



Proper pre-entry, re-entry, and addiction counseling services are necessary to support veterans as they enter and exit the criminal justice system. All veterans should receive these support services, as pre-screening based on

court-martial records are not sufficient to determine whether they are mentally ill. A recent Government Accountability Office described this important discrepancy.¹¹⁶ This report found that of the 91,764 service members who received a misconduct separation between fiscal years (FY) 2011 and 2015, 62 percent (57,141) were diagnosed with PTSD or a TBI within 2 years of their separation. Of the 57,141, 23 percent (12,283) received an OTH discharge, making them potentially ineligible to receive VA health care services. A misconduct separation has proven to be detrimental to VA eligibility, even if it may have been spurred by mental illness.

In the United States, veterans are more often involved with the criminal justice system than non-veterans. According to the Council on Criminal Justice, approximately one-third of veterans have been arrested at least once, compared to less than one-fifth of the general population.¹¹⁷ According to the most recent data, from the Bureau of Justice Statistics, there were approximately 107,400 veterans in state and federal prison in 2016.¹¹⁸ In addition, veterans have a higher rate of substance use disorder than the general population, especially when involved with the criminal justice system. More than one in ten veterans have been diagnosed with a substance use disorder.¹¹⁹ For those involved with the criminal justice system, over half of such veterans have mental health or substance abuse disorders.¹²⁰ Indeed, there is a well-studied relationship between criminal justice involvement, addiction, and mental health that burden veterans more than the general population.

Individuals earn legal veteran status by completing at least two consecutive years of active-duty military service; when they are discharged or separate from service, this discharge or separation must not occur under dishonorable conditions. VA regulations are not mandated by federal law, but the current system follows them. Under current VA regulations,

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individuals who receive an other-than-honorable (OTH) discharge are not eligible to receive VA medical care, including mental health care.

In a 2016 report by the Congressionally appointed Commission on Care, it was noted that many former service members who received an OTH discharge as a result of a regulatory bar (which could be the result of behavioral misconduct related to a service-connected mental health condition) are legally veterans, but are routinely denied health care unless they request, receive, and prevail in eligibility adjudication with the Veterans Benefits Administration (VBA) that their discharge was not dishonorable. Pre-entry and re-entry services, therefore, are necessary to support other-than-honorably discharged veterans in this complicated process.

Given that a significant number of justice-involved veterans experience substance abuse and/or mental health, it is imperative that veterans receive substantial supportive services during the pretrial period. As already discussed, connecting veterans with these services and resources will ensure that they are best prepared to handle their mental health and medical issues as well as any outstanding needs, including OTH status. Given the critical importance of the pretrial period to all defendants, it must be used as an opportunity to assist veterans specifically as well.



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4. Successful Models

All 94 districts in the Federal court system and more than 300 localities provide supportive services to defendants released during the pretrial period.¹²¹ However, New Jersey's Pretrial Services Agency does not have an existing framework to provide such services to defendants, limiting the court's ability to maximize defendants' pretrial success.¹²² Virginia and Washington D.C. both have exemplary pretrial services models, from which New Jersey can draw from to better align our pretrial practices with best practices. Importantly, the models outlined below do not represent individual outliers but present examples of a consistent trend among pretrial programs, demonstrating a commitment to assessing the needs of an individual awaiting a pretrial release determination, and incorporating referrals to service providers as part of the release recommendations imposed on the defendant.

By referencing other models for pre-entry services in the United States and adopting best practices in New Jersey, NJRC reiterates the importance of providing such services to court-involved persons. This stage in the criminal justice process may certainly mark the first time that a person interacts with the court system. As such, given the critical importance of this period not only in connecting persons with needed services and resources but also fundamentally changing behavior, robust pre-entry services must be offered.

Federal System Model¹²³

All 94 districts in the Federal court system provide supportive services to defendants released during the pretrial period. Pretrial Service professionals actively engage in providing social services to pretrial defendants. An important part of their work is directing persons under their supervision to services to help them stay on the right side of the law. Officers build partnerships with community resources that provide services such as substance abuse and mental health treatment, medical care, education and training, and employment assistance. To address the unique challenges presented by defendants with outstanding needs, particularly substance abusers and the mentally ill, officers may handle smaller caseloads, provide more intensive monitoring, and receive special training to manage the needs of these individuals. Imperative to the Federal System's pretrial success rates is the adoption of an adequate screening mechanism that identifies dynamic need factors defendants face. This screening process occurs before the court makes a final release determination, providing pretrial personnel with the ability to incorporate the results of the screening in their pretrial recommendation report. Furthermore, the court often imposes release conditions, such as substance abuse testing and/or treatment, mental health evaluation, and/or counseling, to help structure the person's actions and activities while out on pretrial release.



Virginia Model

Virginia's Pretrial Services Agency implements a comprehensive risk assessment and verification process to make appropriate pretrial release decisions for defendants.¹²⁴ There are a total of eight factors within Virginia's risk assessment instrument:

- (1) current charge,
- (2) pending charges,
- (3) criminal history,
- (4) failure to appear,
- (5) violent convictions,
- (6) length at residence,
- (7) employment/primary caregiver, and
- (8) history of drug abuse."¹²⁵

Because Virginia's risk assessment instrument considers such a wide breadth of risk factors, pretrial service officers can identify defendants who would benefit from "placement...in a substance abuse education or treatment program or [other] services...as a condition of bail."¹²⁶ This approach allows pretrial services officers to more accurately predict the proper release conditions. Virginia's risk assessment process has proven to be effective, as evidenced by the 91% court appearance rate, 93% public safety rate, and 86% supervision compliance rate among defendants released pretrial.¹²⁷

Washington D.C. Model

Washington D.C.'s Pretrial Services Agency uses the pretrial release period as an opportunity to refer defendants to treatment/service programs, with the goal of decreasing recidivism among pretrial defendants.¹²⁸ To help achieve this goal, the Social Services and Assessment Center (SSAC) was created as a separate division within D.C.'s pretrial services agency.¹²⁹ An SSAC officer conducts an assessment to determine if a defendant has any outstanding needs,¹³⁰ and, if so, refers them to community-based services to help resolve the issues. Such services include medical services, addiction and mental health

treatment, education and employment training, and assistance with obtaining identification cards, housing, or food assistance.¹³¹ Washington D.C.'s Pretrial Services Agency has partnerships with various justice agencies and community organizations as a way to build their capacity for support services for defendants under pretrial supervision.¹³² Furthermore, the courts in this district often impose enrollment in treatment programs as a condition of release, based on the recommendations made by pretrial officers. The Pretrial Services Agency's case managers supervise defendants and monitor compliance with treatment, arrange for treatment placements, oversee progress in treatment, review drug testing schedules, keep the court, prosecution and defense apprised of compliance, and provide incentives and sanctions as warranted.¹³³ This type of treatment programming is available for defendants who do not meet the eligibility criteria for Drug Court.¹³⁴

There is a consensus among pretrial scholars that offering services which address the underlying issues defendants face enhances the court's ability to control and correct the behavior of defendants re-entering society after arrest. NJRC can act as a service provider during the pretrial release period for the benefit of the courts. NJRC intends to help courts link pretrial released defendants to essential services, such that defendants' needs may be identified and treated through our individualized assessments and treatment plans.



IV. NJRC Support of Proposed Legislation

Given present deficiencies in pre-entry services for a person's initial interactions with the criminal justice system, Senator Judiciary Chair Brian Stack and Assemblyman Raj Mukherji Esq. currently propose legislation that will implement a one-year pilot program to build upon the foundation established by CJR. NJRC fully supports and endorses this legislation. NJRC will partner with New Jersey's Pretrial Services to strengthen the support network offered during the pretrial release period and provide defendants with comprehensive services that are premised upon clinically based best practices. This pilot program aims to track and measure the impact that providing services will have on defendants who are released pretrial. Ultimately, NJRC intends to demonstrate that access to such services will enhance defendants' pretrial success rates.

1. A Brief Overview of Pilot Program

The pilot program would support and connect defendants to services to help with substance abuse addiction, mental health disorders, medical care, housing, general assistance needs, or employment issues. It is critically important to implement an effective integrated service delivery model, which is driven by licensed social workers, a biopsychosocial evaluation, and ongoing case management services through our case management system. NJRC also recommends that this pilot program coordinate and partner with Federally Qualified Health Centers (FQHC) to provide for basic medical and mental health needs and state certified (Division of Mental Health and Addiction Services) treatment providers to provide for addiction treatment in accordance with clinical "best practices."

Other services that this pilot program should offer include access to certified rehabilitation

counselors at NJRC's Francine A. LeFrak Wellness Center. Participants will also have access to NJRC's, employment training (e.g., resume workshop, job search, and training), and legal services (e.g., municipal court, identification recovery, and driver license restoration). Moreover, NJRC the court-involved person will assign have access to a social worker, case manager, employment training specialist, and legal services coordinator to every pretrial released defendant under our supervision of this pilot program.

The social worker will administer a biopsychosocial assessment for every defendant enrolled in our program. This rigorous assessment enables social workers to address the defendant's needs and create an individualized treatment plan.¹³⁵ A social worker administers a biopsychosocial assessment to obtain a defendant's "life context, noting activities, reactions, feelings, and behavior as symptoms" evolve, as well as their life circumstances at the time of court involvement.¹³⁶ Once the social worker conducts the evaluation, they will then refer the defendant to services addressing the defendant's needs (e.g., substance abuse treatment, mental health evaluation and treatment, housing assistance, license restoration, procurement of health insurance/general assistance, or employment training). Providing wraparound care creates a beneficial dynamic "to elicit the [defendant's] cooperation in activities aimed to alleviate distress" and to facilitate long-term, positive changes in an individual.¹³⁷ For example, given that defendants with mental disorders recidivate at rates two to three times higher than defendants without mental disorders, identifying individuals in need of mental health services and providing such services during the pretrial release period can enhance pretrial success rates among this population.¹³⁸ The case manager will then implement the treatment plan with the defendant while engaging in motivational interviewing, with the goal of

maximizing the defendant's cooperation and success.

Studies show that courts benefit from the aid of social workers, nurse practitioners, and other medical providers as they help facilitate the processes of identifying behavioral health and other needs and provide the defense attorney with key information to incorporate into pretrial release and diversion requests.¹³⁹ They also help to identify community-based treatment and support services and create linkages as needed.¹⁴⁰ "Effective case planning requires criminal justice and behavioral health professionals to assess the full range of criminogenic, responsivity, and maintenance needs presented by their clients and deliver indicated treatment, supervision, and social services accordingly."¹⁴¹

2. The Judicial Model

The pilot program will be implemented in Union County, Monmouth County, and Salem County at no cost to the court. These counties are ideal due to their diverse demographics. Since this pilot program will require consistent communication and coordination with the courts, it is recommended that three judges with prior criminal justice experience, as well as existing pretrial service officers, participate and assist with ensuring that defendants in need be connected to relevant services and resources. Pretrial defendants can receive an individualized assessment either voluntarily or as a court-ordered condition of release.

3. Pilot Program is Consistent with the Legal and Constitutional Rights Afforded to Accused Persons Awaiting Trial

Determining whether a defendant will enroll in the pilot program as a condition of release or whether they do so voluntarily will be based on New Jersey's individualized risk assessment process. The current risk assessment instrument determines an individualized risk score for defendants based on the unique risk factors they pose. Because "[o]ffenders should be provided with supervision and treatment levels that are commensurate with their risk levels,"¹⁴² our recommendation is that: (1) defendants released on their own recognizance (ROR) should be referred, but not required, to receive an evaluation; (2) defendants released on Pretrial Monitoring should receive an evaluation as a condition of release; and (3) the court should determine what conditions to mandate for those released following a no release recommendation. We recommend this model because research shows that moderate-high risk defendants benefit the most from mandatory supervision and individualized treatment.¹⁴³

"Generally, individuals with higher risk scores are assigned more restrictive conditions or referred to more intensive services (interventions), while those with lower risk scores are supervised under less restrictive conditions or receive minimal intervention."¹⁴⁴ When supervision and individualized treatment are imposed on defendants assessed as having moderate-high risk levels, the evidence demonstrates that these defendants are less likely to experience pretrial failure.¹⁴⁵ However, most low-risk defendants experience better outcomes without being subjected to intensive supervision or stringent rules.¹⁴⁶ "Similarly, for risk assessments that include criminogenic needs (e.g., dynamic factors linked directly to criminal behavior), individuals with higher scores in needs domains

receive more intensive case management and treatment planning and services than those with lower scores.”¹⁴⁷ Because NJRC’s recommendation is based on the results of an individualized assessment that considers each defendant’s particular risk factors, our recommendation is consistent with the legal and constitutional rights afforded to accused persons awaiting trial.¹⁴⁸

The response to a pretrial defendant’s conduct is also an important element of pretrial supervision. NAPSA Standards advise that in many cases, condition infractions “can be handled administratively” by the agency supervising the pretrial defendant rather than through a formal court proceeding, if allowed by the court. Research demonstrates that the most effective incentives and sanctions policies include the following elements – certainty, swiftness, proportionality, fairness, and individualization. The elements are further explained below:

- **certainty**—the defendant knows the supervision program’s response scheme beforehand;
- **swiftness**—responses are prompt and timely to the defendant’s behavior;
- **proportionality**—responses are appropriate to the defendant’s behavior;
- **fairness**—defendants perceive the response as fair and just compared to the behavior; and
- **individualization**—responses must consider the defendant’s risk of future noncompliance or pretrial failure.¹⁴⁹

4. Reporting Data

The case manager will be required to record on a centralized database, such as Salesforce, will report on Salesforce, all relevant data including participant progress, each defendant’s results, and the level of compliance, progress, and success throughout the pretrial release period. The pilot program’s pretrial success rates can

then be compared to vicinages that lack the aforementioned pretrial services. The collected data will be used to show that linkage to services during the pretrial release period can improve pretrial outcomes.

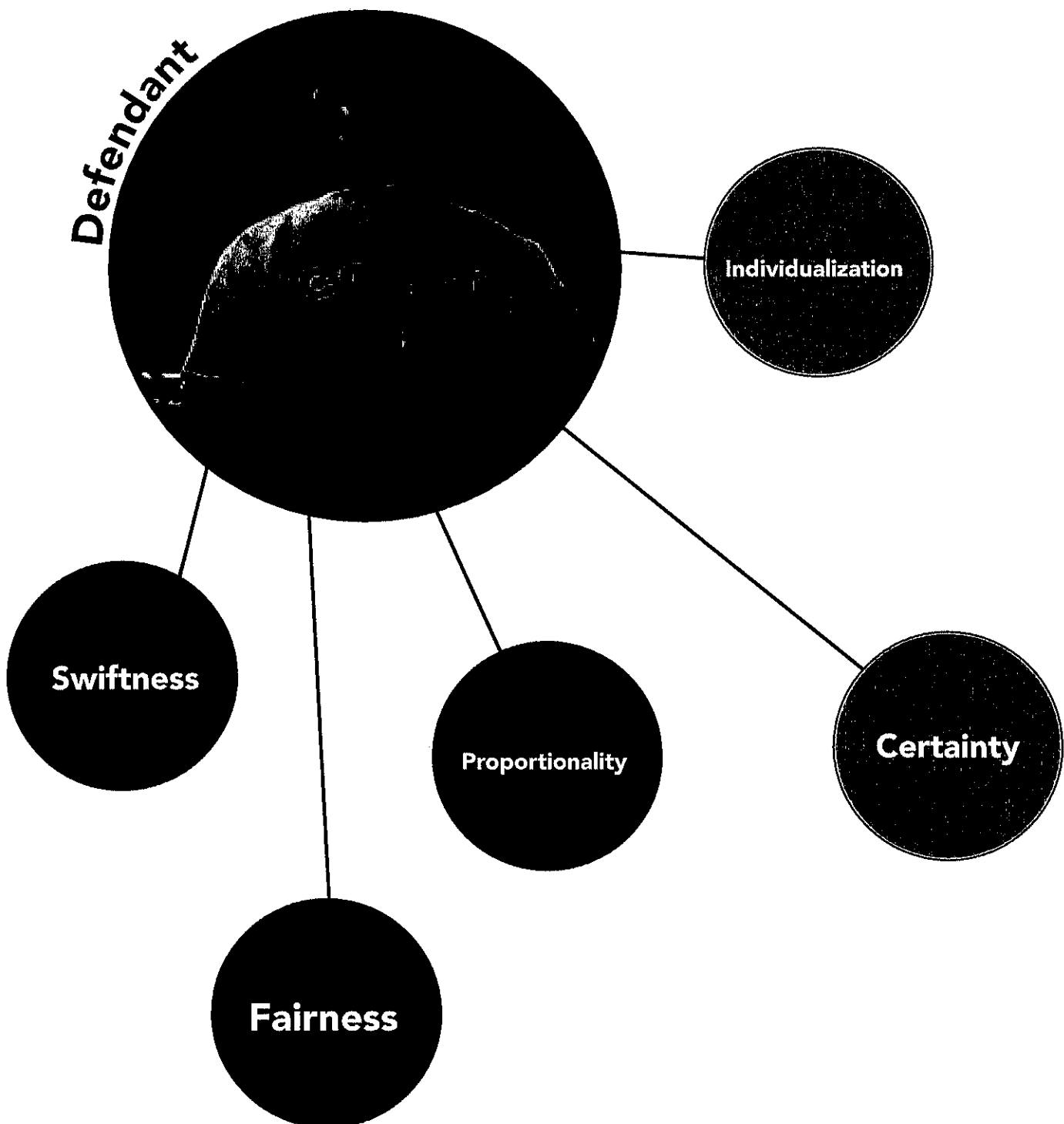
5. Pilot Program Coincides with the Legislative Intent of CJR

The legislative intent behind CJR is threefold:

- (1) to employ the least restrictive conditions while ensuring a defendant’s appearance in court,
- (2) to prevent the obstruction of the criminal justice process, and
- (3) to protect public safety.¹⁵⁰

To satisfy these objectives, statutory law authorizes courts to mandate defendants comply with individualized conditions, such as enrollment in programs that provide medical, psychological, or addiction services.¹⁵¹ Imposing these conditions increases the likelihood that a defendant remains law-abiding and shows up to court when required to do so. Furthermore, the Judiciary acknowledges that providing access to affordable, community-based treatment and housing programs for defendants on pretrial release is essential to CJR’s success. Unfortunately, this goal has proven to be a challenge in New Jersey.¹⁵² NJRC’s This proposed pilot program provides a solution for the courts and for defendants in need. In this way, NJRC courts will allow the courts be able to link pretrial released defendants to critically needed services, which better protects the individual and the community at large.¹⁵³

Defendant



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Conclusion

Pretrial justice reform has become a national movement. Advocates are playing a crucial role not just in changing policy, but in carefully watching the design and implementation of that change. They are challenging local practices and state laws, demanding transparent and complete data, and driving community conversations about the pretrial justice system. The pretrial justice stage of criminal processing has many challenges as it continues to mature and receive greater attention. Yet, there are significant strengths upon which the criminal justice system can build. A blueprint exists for developing guidelines and procedures for pretrial services, set forth by the ABA and NAPSA. There is a foundation of knowledge, informed by research, leading to the creation of evidence-based best practices which pretrial services can incorporate into their operations. Lastly, there are a number of jurisdictions around the country, including all 94 districts in the Federal System, that have efficient and effective pretrial systems in place, which other jurisdictions can use as a model.

Criminal Justice Reform of 2017 made several improvements to the pretrial process in New Jersey, the foremost of which is the replacement of monetary bail to a risk assessment-based approach. Yet, pressing needs remain that CJR failed to address. The recommendations detailed in this report will substantially strengthen the pretrial process and provide critically needed services to defendants during this period. The outlined recommendations will build upon CJR and institute an effective bail system that minimizes unnecessary pretrial detention, increases public safety and court appearance, and most importantly, leads to the fair administration of the pretrial release process. Our overarching goal is to enhance pretrial justice in the New Jersey court system.

Moving forward, the pretrial release process must implement certain evidence-based policies and provide particular services in order to truly meet the needs of justice-involved persons. Providing basic addiction, behavioral, and medical services will not only directly address immediate crises but provide the individual with an opportunity to learn new behaviors. The importance of pre-entry services is that it not only stabilizes the person but gives them an equal footing, perhaps for the first time in their lives, to make healthy and productive decisions.

Indeed, as noted by Senator Stack and Assemblyman Mukherji, the goal of offering services during the pretrial release period must be to provide persons with the necessary resources presently so that they can help themselves in the future and avoid recidivism. If pre-entry services are not offered, particularly with a view toward behavioral and medical treatment, many of the problems and deleterious effects of societal failure will continue to play out unabated in the criminal justice system.

Pre-entry Pilot Legislation

Sponsors: Senator Brian P. Stack and Assemblyman Raj Mukherji, Esq.

AN ACT concerning pretrial services, amending P.L.2014, c.31 and N.J.S.2C:44-1, and supplementing Title 2A of the New Jersey Statutes.

Establishes "Pretrial Partnership for Community Support and Services Pilot Program" for certain defendants.

AN ACT concerning pretrial services, amending P.L.2014, c.31 and N.J.S.2C:44-1, and supplementing Title 2A of the New Jersey Statutes.

BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey:*

1. Section 3 of P.L.2014, c.31 (C.2A:162-17) is amended to read as follows:

3. Except as otherwise provided under sections 4 and 5 of P.L.2014, c.31 (C.2A:162-18 and C.2A:162-19) concerning a hearing on pretrial detention, a court shall make, pursuant to this section, a pretrial release decision for an eligible defendant without unnecessary delay, but in no case later than 48 hours after the eligible defendant's commitment to jail.

a. The court shall order the pretrial release of the eligible defendant on personal recognizance or on the execution of an unsecured appearance bond when, after considering all the circumstances, the Pretrial Services Program's risk assessment and recommendations on conditions of release prepared pursuant to section 11 of P.L.2014, c.31 (C.2A:162-25), and any information that may be provided by a prosecutor or the eligible defendant, the court finds that the release would reasonably assure the eligible defendant's appearance in court when required, the protection of the safety of any other person or the community, and that the eligible defendant will not obstruct or attempt to obstruct the criminal justice process.

b. (1) If the court does not find, after consideration, that the release described in subsection

a. of this section will reasonably assure the eligible defendant's appearance in court when required, the protection of the safety of any other person or the community, and that the eligible defendant will not obstruct or attempt to obstruct the criminal justice process, the court may order the pretrial release of the eligible defendant subject to the following:

(a) the eligible defendant shall not commit any offense during the period of release;

(b) the eligible defendant shall avoid all contact with an alleged victim of the crime;

(c) the eligible defendant shall avoid all contact with all witnesses who may testify concerning the offense that are named in the document authorizing the eligible defendant's release or in a subsequent court order; and

(d) any one or more non-monetary conditions as set forth in paragraph (2) of this subsection.

(2) The non-monetary condition or conditions of a pretrial release ordered by the court pursuant to this paragraph shall be the least restrictive condition, or combination of conditions, that the court determines will reasonably assure the eligible defendant's appearance in court when required, the protection of the safety of any other person or the community, and that the eligible defendant will not obstruct or attempt to obstruct the criminal justice process, which may include that the eligible defendant:

(a) remain in the custody of a designated person, who agrees to assume supervision and to report any violation of a release condition to the court, if the designated person is able to reasonably assure the court that the eligible defendant will appear in court when required, will not pose a danger to the safety of any other person or the community, and will not obstruct or attempt to obstruct the criminal justice process;

(b) maintain employment, or, if unemployed, actively seek employment;

(c) maintain or commence an educational program;

(d) abide by specified restrictions on personal associations, place of abode, or travel;

(e) report on a regular basis to a designated law enforcement agency, or other agency, or pretrial services program;

(f) comply with a specified curfew;

(g) refrain from possessing a firearm, destructive device, or other dangerous weapon;

(h) refrain from excessive use of alcohol, or any unlawful use of a narcotic drug or other controlled substance without a prescription by a licensed medical practitioner;

(i) undergo available medical, psychological, [or] psychiatric treatment, including treatment for drug or alcohol dependency, or a biopsychosocial assessment and participation in treatment and responsive services provided by, or coordinated through, an approved pretrial community support provider as part of the "Pretrial Partnership for Community Support and Services Pilot Program" established pursuant to P.L. , c. (C.) ~~(Pending before the Legislature as this bill)~~, and remain in a specified institution if required for that purpose;

(j) return to custody for specified hours following release for employment, schooling, or other limited purposes;

(k) be placed in a pretrial home supervision capacity with or without the use of an approved electronic monitoring device. The court may order the eligible defendant to pay all or a portion of the costs of the electronic monitoring, but the court may waive the payment for an eligible defendant who is indigent and who has demonstrated to the court an inability to pay all or a portion of the costs; or

(l) satisfy any other condition that is necessary to reasonably assure the eligible defendant's appearance in court when required, the protection of the safety of any other person or the community, and that the eligible defendant will not obstruct or attempt to obstruct the criminal justice process, which shall not include any prohibition or restriction concerning manufacturing, distributing, or dispensing, or possessing or having under control with intent to manufacture, distribute, or dispense, marijuana or hashish in violation of paragraph (12) of subsection b. of N.J.S.2C:35-5, or possession of marijuana or hashish in violation of paragraph (3) of subsection

a. of N.J.S.2C:35-10.

c. (1) If the court does not find, after consideration, that the release described in subsection a. or b. of this section will reasonably assure the eligible defendant's appearance in court when required, the court may order the pretrial release of the eligible defendant on monetary bail, other than an unsecured appearance bond. The court may only impose monetary bail pursuant to this subsection to reasonably assure the eligible defendant's appearance. The court shall not impose the monetary bail to reasonably assure the protection of the safety of any other person or the community or that the eligible defendant will not obstruct or attempt to obstruct the criminal justice process, or for the purpose of preventing the release of the eligible defendant.

(2) If the eligible defendant is unable to post the monetary bail imposed by the court pursuant to this subsection, and for that reason remains detained in jail, the provisions of section 8 of P.L.2014, c.31 (C.2A:162-22) shall apply to the eligible defendant.

d. (1) If the court does not find, after consideration, that the release described in subsection a., b., or c. will reasonably assure the eligible defendant's appearance in court when required, the protection of the safety of any other person or the community, and that the eligible defendant will not obstruct or attempt to obstruct the criminal justice process, the court may order the pretrial release of the eligible defendant using a combination of non-monetary conditions as set forth in subsection b. of this section, and monetary bail as set forth in subsection c. of this section.

(2) If the eligible defendant is unable to post the monetary bail imposed by the court in combination with non-monetary conditions pursuant to this subsection, and for that reason remains detained in jail, the provisions of section 8 of P.L.2014, c.31 (C.2A:162-22) shall apply to the eligible defendant.

e. For purposes of the court's consideration for pretrial release described in this section, with respect to whether the particular method of release will reasonably assure that the eligible defendant will not obstruct or attempt to obstruct the criminal justice process, this reasonable assurance may be deemed to exist if the prose-

culator does not provide the court with information relevant to the risk of whether the eligible defendant will obstruct or attempt to obstruct the criminal justice process.
(cf: P.L.2021, c.19, s.7)

2. Section 6 of P.L.2014, c.31 (C.2A:162-20) is amended to read as follows:

6. In determining in a pretrial detention hearing whether no amount of monetary bail, non-monetary conditions or combination of monetary bail and conditions would reasonably assure the eligible defendant's appearance in court when required, the protection of the safety of any other person or the community, or that the eligible defendant will not obstruct or attempt to obstruct the criminal justice process, the court may take into account information concerning:

a. The nature and circumstances of the offense charged;

b. The weight of the evidence against the eligible defendant, except that the court may consider the admissibility of any evidence sought to be excluded;

c. The history and characteristics of the eligible defendant, including:

(1) the eligible defendant's character, physical and mental condition, family ties, employment, financial resources, length of residence in the community, community ties, past conduct, history relating to drug or alcohol abuse, criminal history, and record concerning appearances at court proceedings, except with respect to these factors, the court shall not consider manufacturing, distributing, or dispensing, or possessing or having under control with intent to manufacture, distribute, or dispense, marijuana or hashish in violation of paragraph (12) of subsection b. of N.J.S.2C:35-5, or possession of marijuana or hashish in violation of paragraph (3) of subsection a. of N.J.S.2C:35-10; and

(2) whether, at the time of the current offense or arrest, the eligible defendant was on probation, parole, or on other release pending trial, sentencing, appeal, or completion of sentence for an offense under federal law, or the law of this or any other state;

d. The nature and seriousness of the danger to any other person or the community that would be posed by the eligible defendant's release, if

applicable;

e. The nature and seriousness of the risk of obstructing or attempting to obstruct the criminal justice process that would be posed by the eligible defendant's release, if applicable; [and]

f. The release recommendation of the pretrial services program obtained using a risk assessment instrument under section 11 of P.L.2014, c.31 (C.2A:162-25). Pretrial services shall recommend no release when a defendant has been charged with any crime for which the eligible defendant would be subject to a mandatory term of imprisonment pursuant to subsection c. of N.J.S.2C:43-6 for a crime involving the use or possession of a firearm other than a violation of:

(1) subsection a. or d. of N.J.S.2C:39-3;

(2) paragraph (1) or (2) of subsection a. of N.J.S.2C:39-4;

(3) subsection a. of section 1 of P.L. 1998, c.26 (C.2C:39-4.1); or

(4) paragraph (1) of subsection b. or paragraph (1) or (2) of subsection c. of N.J.S.2C:39-5; and

g. Whether the defendant undergoes a biopsychosocial assessment and participates in treatment and responsive services provided by, or coordinated through, an approved pretrial community support provider as part of the "Pretrial Partnership for Community Support and Services Pilot Program" established pursuant to P.L. , c. (C.)(Pending before the Legislature as this bill).

(cf: P.L.2022, c.43, s.2)

3. Section 11 of P.L.2014, c.31 (C.2A:162-25) is amended to read as follows:

11. a. The Administrative Director of the Courts shall establish and maintain a Statewide Pretrial Services Program which shall provide pretrial services to effectuate the purposes of sections 1 through 11 of P.L.2014, c.31 (C.2A:162-15 et seq.).

b. The Pretrial Services Program shall, after an eligible defendant is temporarily detained pursuant to subsection a. of section 2 of P.L.2014, c.31 (C.2A:162-16) following the issuance of a complaint-warrant, conduct a risk assessment on that eligible defendant for the purpose of making recommendations to the court concerning an appropriate pretrial release

decision, including whether the eligible defendant shall be: released on the eligible defendant's own personal recognizance or on execution of an unsecured appearance bond; released on a non-monetary condition or conditions as set forth under subsection b. of section 3 of P.L.2014, c.31 (C.2A:162-17); released on monetary bail, other than an unsecured appearance bond; released on a combination of monetary bail and non-monetary conditions set forth under section 3 of P.L.2014, c.31 (C.2A:162-17); [or] any other conditions necessary to effectuate the purposes of sections 1 through 11 of P.L.2014, c.31 (C.2A:162-15 et seq.); or released to an approved pretrial services provider for purposes of participating in the "Pretrial Partnership for Community Support and Services Pilot Program" established pursuant to P.L. , c. (C.)(Pending before the Legislature as this bill). The risk assessment shall be completed and presented to the court so that the court can, without unnecessary delay, but in no case later than 48 hours after the eligible defendant's commitment to jail, make a pretrial release decision on the eligible defendant pursuant to section 3 of P.L.2014, c.31 (C.2A:162-17).

c. The pretrial risk assessment shall be conducted using a risk assessment instrument approved by the Administrative Director of the Courts that meets the requirements of this subsection.

(1) (a) The approved risk assessment instrument shall be objective, standardized, and developed based on analysis of empirical data and risk factors relevant to the risk of failure to appear in court when required and the danger to the community while on pretrial release. The risk assessment instrument shall not be required to include factors specifically pertaining to the risk for obstructing or attempting to obstruct the criminal justice process.

(b) The approved risk assessment instrument shall not consider a charge, including any charge of delinquency, conviction, or adjudication of delinquency, or civil penalty if the act was an unlawful act and not a crime or offense, based on a violation of any of the following, as risk factors relevant to the risk of failure to appear in court when required and the danger to the community while on pretrial release: manufacturing, distrib-

uting, or dispensing, or possessing or having under control with intent to manufacture, distribute, or dispense, marijuana or hashish in violation of paragraph (11) of subsection b. of N.J.S.2C:35-5, or a lesser amount of marijuana or hashish in violation of paragraph (12) of subsection b. of that section; or a violation of either of those paragraphs and a violation of subsection a. of section 1 of P.L.1987, c.101 (C.2C:35-7) or subsection a. of section 1 of P.L.1997, c.327 (C.2C:35-7.1) for distributing, dispensing, or possessing with intent to distribute or dispense, on or within 1,000 feet of any school property, or on or within 500 feet of the real property comprising a public housing facility, public park, or public building; or obtaining, possessing, using, being under the influence of, or failing to make lawful disposition of marijuana or hashish in violation of paragraph (3) or (4) of subsection a., or subsection b., or subsection c. of N.J.S.2C:35-10; or a violation involving marijuana or hashish as described herein and a violation of N.J.S.2C:36-2 for using or possessing with intent to use drug paraphernalia with that marijuana or hashish.

(2) The approved risk assessment instrument shall gather demographic information about the eligible defendant including, but not limited to, race, ethnicity, gender, financial resources, and socio-economic status. Recommendations for pretrial release shall not be discriminatory based on race, ethnicity, gender, or socio-economic status.

d. In addition to the pretrial risk assessments made pursuant to this section, the Pretrial Services Program shall monitor appropriate eligible defendants released on conditions as ordered by the court.

(cf: P.L.2021, c.19, s.10)

4. N.J.S.2C:44-1 is amended to read as follows:

2C:44-1. a. In determining the appropriate sentence to be imposed on a person who has been convicted of an offense, the court shall consider the following aggravating circumstances:

(1) The nature and circumstances of the offense, and the role of the actor in committing the offense, including whether or not it was committed in an especially heinous, cruel, or depraved

manner;

(2) The gravity and seriousness of harm inflicted on the victim, including whether or not the defendant knew or reasonably should have known that the victim of the offense was particularly vulnerable or incapable of resistance due to advanced age, ill-health, or extreme youth, or was for any other reason substantially incapable of exercising normal physical or mental power of resistance;

(3) The risk that the defendant will commit another offense;

(4) A lesser sentence will depreciate the seriousness of the defendant's offense because it involved a breach of the public trust under chapters 27 and 30 of this title, or the defendant took advantage of a position of trust or confidence to commit the offense;

(5) There is a substantial likelihood that the defendant is involved in organized criminal activity;

(6) The extent of the defendant's prior criminal record and the seriousness of the offenses of which the defendant has been convicted;

(7) The defendant committed the offense pursuant to an agreement to either pay or be paid for the commission of the offense and the pecuniary incentive was beyond that inherent in the offense itself;

(8) The defendant committed the offense against a police or other law enforcement officer, correctional employee or firefighter, acting in the performance of the officer, employee, or firefighter duties while in uniform or exhibiting evidence of his authority; the defendant committed the offense because of the status of the victim as a public servant; or the defendant committed the offense against a sports official, athletic coach or manager, acting in or immediately following the performance of the person's duties or because of the person's status as a sports official, coach or manager;

(9) The need for deterring the defendant and others from violating the law;

(10) The offense involved fraudulent or deceptive practices committed against any department or division of State government;

(11) The imposition of a fine, penalty, or order of restitution without also imposing a term of imprisonment would be perceived by the defen-

dant or others merely as part of the cost of doing business, or as an acceptable contingent business or operating expense associated with the initial decision to resort to unlawful practices;

(12) The defendant committed the offense against a person who the defendant knew or should have known was 60 years of age or older, or disabled;

(13) The defendant, while in the course of committing or attempting to commit the crime, including the immediate flight therefrom, used or was in possession of a stolen motor vehicle;

(14) The offense involved an act of domestic violence, as that term is defined in subsection a. of section 3 of P.L.1991, c.261 (C.2C:25-19), committed in the presence of a child under 16 years of age; and

(15) The offense involved an act of domestic violence, as that term is defined in subsection a. of section 3 of P.L.1991, c.261 (C.2C:25-19) and the defendant committed at least one act of domestic violence on more than one occasion.

b. In determining the appropriate sentence to be imposed on a person who has been convicted of an offense, the court may properly consider the following mitigating circumstances:

(1) The defendant's conduct neither caused nor threatened serious harm;

(2) The defendant did not contemplate that the defendant's conduct would cause or threaten serious harm;

(3) The defendant acted under a strong provocation;

(4) There were substantial grounds tending to excuse or justify the defendant's conduct, though failing to establish a defense;

(5) The victim of the defendant's conduct induced or facilitated its commission;

(6) The defendant has compensated or will compensate the victim of the defendant's conduct for the damage or injury that the victim sustained, or will participate in a program of community service;

(7) The defendant has no history of prior delinquency or criminal activity or has led a law-abiding life for a substantial period of time before the commission of the present offense;

(8) The defendant's conduct was the result of circumstances unlikely to recur;

(9) The character and attitude of the defen-

dant indicate that the defendant is unlikely to commit another offense;

(10) The defendant is particularly likely to respond affirmatively to probationary treatment;

(11) The imprisonment of the defendant would entail excessive hardship to the defendant or the defendant's dependents;

(12) The willingness of the defendant to cooperate with law enforcement authorities;

(13) The conduct of a youthful defendant was substantially influenced by another person more mature than the defendant; [and]

(14) The defendant was under 26 years of age at the time of the commission of the offense; and

(15) For a defendant participating in the Pre-trial Partnership for Community Support and Services Pilot Program established pursuant to P.L. , c. (pending before the Legislature as this bill), whether the defendant successfully completed the program and complied with the conditions of pretrial release established by the court and the approved pretrial services provider, as defined pursuant to section 4 of P.L. , c. (C.)(pending before the Legislature as this bill).

c. (1) A plea of guilty by a defendant or failure to so plead shall not be considered in withholding or imposing a sentence of imprisonment.

(2) When imposing a sentence of imprisonment the court shall consider the defendant's eligibility for release under the law governing parole, including time credits awarded pursuant to Title 30 of the Revised Statutes, in determining the appropriate term of imprisonment.

d. Presumption of imprisonment. The court shall deal with a person who has been convicted of a crime of the first or second degree, or a crime of the third degree where the court finds that the aggravating factor in paragraph (5), (14), or (15) of subsection a. of this section applies, by imposing a sentence of imprisonment unless, having regard to the character and condition of the defendant, it is of the opinion that the defendant's imprisonment would be a serious injustice which overrides the need to deter such conduct by others. Notwithstanding the provisions of subsection e. of this section, the court shall deal with a person who has been convicted of theft of a motor vehicle or of the unlawful taking of a motor vehicle and who has previously been convicted of either offense by imposing a sentence

of imprisonment unless, having regard to the character and condition of the defendant, it is of the opinion that imprisonment would be a serious injustice which overrides the need to deter such conduct by others.

e. The court shall deal with a person convicted of an offense other than a crime of the first or second degree, who has not previously been convicted of an offense, without imposing a sentence of imprisonment unless, having regard to the nature and circumstances of the offense and the history, character, and condition of the defendant, it is of the opinion that imprisonment is necessary for the protection of the public under the criteria set forth in subsection a. of this section, except that this subsection shall not apply if the court finds that the aggravating factor in paragraph (5), (14) or (15) of subsection a. of this section applies or if the person is convicted of any of the following crimes of the third degree: theft of a motor vehicle; unlawful taking of a motor vehicle; eluding; strict liability vehicular homicide pursuant to section 1 of P.L.2017, c.165 (C.2C:11-5.3); if the person is convicted of a crime of the third degree constituting use of a false government document in violation of subsection c. of section 1 of P.L.1983, c.565 (C.2C:21-2.1); if the person is convicted of a crime of the third degree constituting distribution, manufacture or possession of an item containing personal identifying information in violation of subsection b. of section 6 of P.L.2003, c.184 (C.2C:21-17.3); if the person is convicted of a crime of the third or fourth degree constituting bias intimidation in violation of N.J.S.2C:16-1; if the person is convicted of a crime of the third degree under paragraph (12) of subsection b. of N.J.S.2C:12-1 or section 2 of P.L.1997, c.111 (C.2C:12-1.1); or if the person is convicted of a crime of the third or fourth degree under the provisions of section 1 or 2 of P.L.2007, c.341 (C.2C:33-29 or C.2C:33-30).

f. Presumptive Sentences. (1) Except for the crime of murder, unless the preponderance of aggravating or mitigating factors, as set forth in subsections a. and b. of this section, weighs in favor of a higher or lower term within the limits provided in N.J.S.2C:43-6, when a court determines that a sentence of imprisonment is warranted, it shall impose sentence as follows:

(a) To a term of 20 years for aggravated manslaughter or kidnapping pursuant to paragraph (1) of subsection c. of N.J.S.2C:13-1 when the offense constitutes a crime of the first degree;

(b) Except as provided in subparagraph (a) of this paragraph to a term of 15 years for a crime of the first degree;

(c) To a term of seven years for a crime of the second degree;

(d) To a term of four years for a crime of the third degree; and

(e) To a term of nine months for a crime of the fourth degree.

In imposing a minimum term pursuant to subsection b. of N.J.S.2C:43-6, the sentencing court shall specifically place on the record the aggravating factors set forth in this section which justify the imposition of a minimum term.

Unless the preponderance of mitigating factors set forth in subsection b. weighs in favor of a lower term within the limits authorized, sentences imposed pursuant to paragraph (1) of subsection a. of N.J.S.2C:43-7 shall have a presumptive term of life imprisonment. Unless the preponderance of aggravating and mitigating factors set forth in subsections a. and b. of this section weighs in favor of a higher or lower term within the limits authorized, sentences imposed pursuant to paragraph (2) of subsection a. of N.J.S.2C:43-7 shall have a presumptive term of 50 years' imprisonment; sentences imposed pursuant to paragraph (3) of subsection a. of N.J.S.2C:43-7 shall have a presumptive term of 15 years' imprisonment; and sentences imposed pursuant to paragraph (4) of subsection a. of N.J.S.2C:43-7 shall have a presumptive term of seven years' imprisonment.

In imposing a minimum term pursuant to subsection b. of N.J.S.2C:43-7, the sentencing court shall specifically place on the record the aggravating factors set forth in this section which justify the imposition of a minimum term.

(2) In cases of convictions for crimes of the first or second degree where the court is clearly convinced that the mitigating factors substantially outweigh the aggravating factors and where the interest of justice demands, the court may sentence the defendant to a term appropriate to a crime of one degree lower than that of the crime for which the defendant was convicted. If

the court does impose sentence pursuant to this paragraph, or if the court imposes a noncustodial or probationary sentence upon conviction for a crime of the first or second degree, the sentence shall not become final for 10 days in order to permit the appeal of the sentence by the prosecution.

g. Imposition of Noncustodial Sentences in Certain Cases. If the court, in considering the aggravating factors set forth in subsection a. of this section, finds the aggravating factor in paragraph (2), (5), (10), or (12) of subsection a. of this section and does not impose a custodial sentence, the court shall specifically place on the record the mitigating factors which justify the imposition of a noncustodial sentence.

h. Except as provided in section 2 of P.L.1993, c.123 (C.2C:43-11), the presumption of imprisonment as provided in subsection d. of this section shall not preclude the admission of a person to the Intensive Supervision Program, established pursuant to the Rules Governing the Courts of the State of New Jersey. (cf: P.L.2020, c.110, s.1)

5. (New section) a. There is hereby established a one-year pilot program which shall be known as the "Pretrial Partnership for Community Support and Services Pilot Program" in Monmouth and Union Counties which shall provide and coordinate a biopsychosocial assessment, as well as appropriate case management, treatment, and other services for eligible defendant's on pretrial release to improve court appearance rates and enhance short-term and long-term public safety. The pilot program shall not accept new eligible defendants to participate in the program following the conclusion of its one-year duration, but may continue to offer services to any participating eligible defendant whose pretrial release period continues beyond the one-year duration of the program, notwithstanding the general conclusion thereof.

b. The Pretrial Partnership for Community Support and Services Commission shall approve a pretrial community support provider in accordance with section 9 of P.L. , c. (C.)(pending before the Legislature as this bill). At the conclusion of the pilot program, the Pretrial Partnership for Community Support and Services Commis-

sion shall prepare and submit to the Governor, the Administrative Office of the Courts, and, pursuant to section 2 of P.L.1991, c.164 (C.52:14-19.1), the Legislature, a report and program data, as prepared and provided by an approved pretrial community support provider. The report shall include recommendations on whether to continue the pretrial pilot program, expand the program, or change the program, and what legislative, administrative, and judicial actions are necessary to effectuate the recommendations.

6. (New section) As used in this act:

“Approved pretrial community support provider” or “approved organization” means an organization approved by the “Pretrial Partnership for Community Support and Services Commission” pursuant to section 7 of P.L. , c. (C.)(pending before the Legislature as this bill) to establish and operate a comprehensive mental health, social needs, and substance use disorder treatment assessment, service program, and case management center for eligible defendants in each of Monmouth and Union Counties.

“Biopsychosocial assessment” means an assessment conducted by an approved pretrial community support provider, which evaluates biological, psychological, social, and any other relevant factors which may have contributed to the eligible defendant’s alleged criminal conduct and which may be addressed during the period of pretrial release in order to meet the objectives of the pretrial pilot program.

“Commission” means the “Pretrial Partnership for Community Support and Services Commission” established pursuant to section 7 of P.L. , c. (C.)(pending before the Legislature as this bill).

“Eligible defendant” means a person who is arrested for a crime or offense in Monmouth or Union counties for whom the court, in accordance with section 3 of P.L.2014, c.31 (C.2A:162-17) and section 6 of P.L.2014, c.31 (C.2A:162-20), grants pretrial release conditioned on monitoring by pretrial services. “Eligible defendant” may also mean a defendant who would qualify under the risk assessment to be released on the defendant’s own personal recognizance or on execution of an unsecured appearance bond, but who voluntarily agrees, upon petition to the court, to

participate in the pretrial pilot program.

“Pretrial pilot program” means the Pretrial Partnership for Community Support and Services Pilot Program.

7. (New section) a. Notwithstanding any provisions of sections 4 and 5 of P.L.2014, c.31 (C.2A:162-18 and C.2A:162-19) to the contrary, and following the Pretrial Services Program’s risk assessment and recommendations on conditions of release, the court may release an eligible defendant, after the eligible defendant is temporarily detained pursuant to subsection a. of section 2 of P.L.2014, c.31 (C.2A:162-16), following the issuance of a complaint-warrant, with a condition requiring completion of a biopsychosocial assessment and participation in responsive services provided by or coordinated through an approved pretrial community support provider as part of the pretrial pilot program established pursuant to P.L. , c. (Pending before the Legislature as this bill).

b. An eligible defendant may voluntarily request to participate in the pretrial pilot program established pursuant to P.L. , c. (C.) (Pending before the Legislature as this bill) upon petition to the court prior to a pretrial release decision pursuant to section 3 of P.L.2014, c.31 (C.2A:162-17). An eligible defendant voluntarily participating in the pretrial pilot program shall be subject to a condition of release requiring completion of a biopsychosocial assessment and participation in responsive services provided by or coordinated through an approved pretrial community support provider.

c. Successful participation by an eligible defendant with the approved pretrial community support provider shall be given due consideration by the prosecutor in making charging decisions and sentencing recommendations, and by courts in determining an appropriate sentence, as is set forth in subsection b. of section 11 of P.L.2014, c.31 (C.2A:162-25).

8. (New section) a. The approved pretrial community support provider shall conduct a biopsychosocial assessment of each eligible defendant required to undergo a biopsychosocial assessment pursuant to section 7 of P.L. , c. (C.)(pending before the Legislature as this

bill) and shall be responsible for developing and implementing an individualized pretrial plan for each eligible defendant admitted to the pretrial pilot program.

b. The approved pretrial services provider shall establish a comprehensive assessment procedure that each eligible defendant shall be required to complete. The assessment shall include, but need not be limited to:

- (1) a screening for substance use disorders;
- (2) medical, mental health, and behavioral health assessments including an evaluation of the eligible defendant's medical needs; and
- (3) an evaluation of the eligible defendant's employment readiness, capacity for independence, and ability to manage the eligible defendant's personal affairs.

c. The individualized pretrial plan shall include, but not be limited to, recommendations for community-based services prior to the eligible defendant's trial. One or more licensed professionals employed by the approved pretrial community support provider shall determine the medical, psychiatric, psychological, educational, vocational, substance abuse, and social rehabilitative services or needs that shall be incorporated into an eligible defendant's plan. Each plan shall be recorded by the approved pretrial community support provider and submitted to the court and the Pretrial Services Program.

d. The approved pretrial community support provider shall provide and coordinate services and treatment as deemed appropriated based upon the results of the eligible defendant's biopsychosocial assessment and pursuant to the responsive care plan.

e. The approved pretrial community support provider shall submit to the court and Pretrial Services Program no later than every 120 days, a progress report on the eligible defendant required to participate in the pretrial pilot program as a condition of pretrial release, and appear or otherwise provide further information, as requested by the court, at hearings regarding the defendant.

f. The approved pretrial community support provider shall notify pretrial services if:

- (1) a defendant required to participate in the pretrial pilot program as a condition of their release has failed to attend scheduled program-re-

lated appointments and has not been in contract with the approved pretrial community support provider for 30 days or longer; or

(2) the approved pretrial community support provider has reason to believe that a defendant required to participate in the pretrial pilot program as a condition of their release has had contact with an alleged victim, is in possession of a firearm, has committed a crime against a person, or for such other reason as the court, upon releasing the defendant, shall determine to pose a risk of danger to others or the community.

g. The court shall provide notice to the approved pretrial community support provider of all hearings pertaining to a defendant participating in the pretrial pilot program.

9. (New section) a. There is hereby established a commission known as the Pretrial Partnership for Community Support and Services Commission. The commission shall consist of five members to be appointed as follows: one member who is appointed by the Governor based upon the recommendation of the Senate President; one member who is appointed by the Governor based upon the recommendation of the Speaker of the General Assembly; one member appointed by the Governor; and two public members with experience in the provision of assistance and services to defendants prior to, during, or after a period of incarceration, to be appointed by Governor. The commission shall organize no later than 30 days after the appointment of its members to begin identifying and approving a pretrial community support provider in Monmouth and Union Counties.

b. No later than 90 days after organizing, the commission shall approve an organization to act as an approved pretrial community support provider. An approved pretrial community support provider shall provide and coordinate biopsychosocial assessment, case management, and responsive treatment and services for eligible defendants. An approved organization shall be qualified to meet the unique needs of eligible defendants through the provision of services, either by itself or by referral to other services that may include, but are not limited to,:

- (1) cognitive behavioral therapy;
- (2) life skills and anger management;

(3) opportunities for mentorship and fellowship through partnerships with community organizations;

(4) support services to coordinate care between medication assisted treatment, behavioral health, and psychiatric and medical care providers; and

(5) legal services which include, but shall not be limited to:

(a) obtaining vital records;

(b) assistance with required court filings and processes; and

(c) identification assistance services.

The approved pretrial community support provider shall be a non-profit or for-profit organization that has provided, for a period of at least two years prior to the initial implementation of the "Pretrial Partnership for Community Support and Services Pilot Program" pursuant to P.L. , c. (C.) (pending before the Legislature as this bill), comprehensive reentry services within this State for inmates released from prisons or jails, including medical, social, legal, and other support services that are similar to the services available for eligible defendants on pretrial release participating in the pretrial pilot program.

c. At the conclusion of the pilot program, the Commission shall prepare and submit to the Governor, Administrative Office of the Courts, and, pursuant to section 2 of P.L.1991, c.164 (C.52:14-19.1), the Legislature, a report and program data, as prepared and provided by an approved pretrial community support provider. The Commission's report shall include recommendations on whether to continue the pilot program, expand the program, or change the program, and what legislative, administrative, or judicial actions are necessary to effectuate the recommendations.

d. The "Pretrial Partnership for Community Support and Services Commission" shall be in, but not of, the Department of Community Affairs.

10.(New section) The Administrative Office of the Courts may adopt guidance as necessary to effectuate the provisions of this act, but a failure by the office to adopt such guidance shall not delay the implementation of the pretrial pilot program.

11.No money shall be appropriated by the State to an approved pretrial community support provider to effectuate the purposes of the "Pretrial Partnership for Community Support and Services Pilot Program."

12. This act shall take effect immediately.

STATEMENT

This bill establishes the "Pretrial Partnership for Community Support and Services Pilot Program."

The bill will pilot the program in two counties across the State: Monmouth and Union Counties. The purpose of the program is to offer services and treatment, improve court appearance rates, and enhance short-term and long-term public safety.

As a condition of release established by the court, an eligible defendant will receive a biopsychosocial assessment and responsive treatment and services provided by and coordinated through an approved pretrial community support provider. An eligible defendant is defined as a person who is arrested for a crime or offense in Monmouth and Union counties and for whom the court grants pretrial release conditioned on monitoring by pretrial services. Further, eligible defendant may also mean a defendant who would qualify under the risk assessment to be released on the defendant's own personal recognizance or on execution of an unsecured appearance bond, but who voluntarily agrees, upon petition to the court, to participate in the program.

The assessment is required to include, but not be limited to: (1) a screening for substance use disorders; (2) a medical, mental health, and behavioral health assessment including an evaluation of the eligible defendant's medical needs; and (3) an evaluation of the eligible defendant's employment readiness, capacity for independence, and ability to manage the eligible defendant's personal affairs.

Further, the approved pretrial community support provider is required to engage each eligible defendant to develop and implement an individualized pretrial case plan for services the eligible defendant is assessed as needing.

The plan is required to, but not be limited to, make recommendations for community-based services prior to the inmate's trial and will be submitted to the court and pretrial services. The approved pretrial community support provider will submit to the court and pretrial services, no later than every 120 days, a progress report on the eligible defendant required to participate in the pretrial pilot program as a condition of pretrial release and appear or otherwise provide further information as requested by the court, at hearings regarding the defendant.

Successful participation by an eligible defendant with the approved pretrial community support provider shall be given due consideration by the prosecutors and courts as a factor to reduce a sentence imposed or dismiss a prosecution.

The approved pretrial community support provider is required notify pretrial services if an eligible defendant fails to attend scheduled program-related appointments and has not been in contact with the approved pretrial community support provider for 30 days, or if the pretrial community support provider has reason to believe that an eligible defendant has had contact with an alleged victim, is in possession of a firearm, has committed a crime against a person, or for such other reason the court has determined poses a risk of danger to others or the community. The court is required provide notice to the approved pretrial community support provider of all hearings pertaining to a defendant participating in the pretrial pilot program.

The bill establishes the "Pretrial Partnership for Community Support and Services Commission," ("commission") which is responsible for identifying an organization that will become the approved pretrial community support provider. The commission consist of five members, including one member who is appointed by Governor based upon the recommendation by the Senate President; one member who is appointed by the Governor based upon the recommendation by the Speaker of the General Assembly; one member appointed by the Governor; and two public members with experience in the provision of assistance and services to defendants prior to, during, or after a period of incarceration, to be appointed by Governor.

The commission will review a report prepared

at the conclusion of program, include program data, submitted by the approved pretrial community support provider and provide to the Governor, Administrative Office of the Courts, and the Legislature report and program data. The commission is required to make recommendations on whether to continue the pilot program, expand the program, or change the program, and what legislative, administrative, or judicial actions are necessary to effectuate the recommendations

The approved community support provider is required to be a non-profit or for-profit organization that has provided, for a period of at least two years prior to the initial implementation of the pretrial pilot program, comprehensive reentry services within this State for inmates released from prisons or jails, including medical, social, legal, and other support services that are similar to the services available for eligible defendants on pretrial release participating in the pretrial pilot program.

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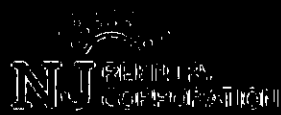
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60-000-000-1000-000

5901 Summit Ave 6th Floor, Jersey City, NJ 07310
P: 551.256.9707 F: 201.662.7830

1/20/11



PHIL MURPHY
Governor

State of New Jersey
Office of the Public Defender
25 Market Street
P.O. Box 850

JENNIFER N. SELLITTI
Public Defender

TAHESHA WAY
Lt. Governor

Trenton, NJ 08625
Tel: (609) 292-7087; (Cell) (781) 526-0733
E-Mail: jennifer.sellitti@opd.nj.gov

Senate Judiciary Committee Hearing on Criminal Justice Reform Written Testimony of Public Defender Jennifer Sellitti

The New Jersey Office of the Public Defender (NJ OPD) was instrumental in the creation and implementation of Criminal Justice Reform. We thank Chairman Stack, Vice Chair Pou, and the members of the Senate Judiciary Committee for the invitation to testify and are prepared to answer questions about the recommendations contained in the Report of the Reconvened Joint Committee on Criminal Justice.¹ The recommendations center around three, core concerns: ensuring access to pre-trial services; preventing those on pre-trial release from being re-arrested before or after their cases resolve; and maintaining the promise of CJRA – that only those who pose a substantial risk of nonappearance or risk to public safety are incarcerated pre-trial. In an effort not to repeat perspectives offered by partner organizations, NJ OPD will focus our testimony on how holistic representation and public defender-led access to services can address the Committee's concerns. Holistic defense not only improves case outcomes for the people we serve but prevents re-arrest pre-trial, lowers prison sentences, shortens the lifecycle of indictable cases, saves taxpayer dollars, and makes communities safe.

Public Defense is Public Safety

People always think of police and prosecutors when they think of public safety, but our public defense system is an equally, and arguably even more powerful, tool. Public defenders in New Jersey represent approximately 90% of people facing indictable offenses. Public defenders meet people as soon as they are arrested when they are often in the greatest state of crisis and need. We build trust with the people we represent, work to understand their goals and needs, and serve as their guides to complex legal systems. We are in the best position to prepare, encourage, and support them as they make the decision to engage in services that will help them change their lives. Public defenders should be the ones constructing and proposing pre-trial service plans in partnership with our clients and posing them to the Court.²

¹ Report of the Reconvened Joint Committee on Criminal Justice, New Jersey Judiciary, June 2023.

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A New Approach to Public Defense

I was sworn to the position of Public Defender on February 1, just five weeks ago. While there is much to do, the transformation of our office centers around a singular goal: to make New Jersey the national leader in statewide holistic defense. Traditional public defense is case-centered. Holistic defense is client centered. In a holistic model, a client's life goals are prioritized, even when they conflict with legal outcomes. This means clients receive not only first-class representation in courtrooms across our state but assistance addressing the root causes of the harm they may have caused to others and to themselves.

The Criminal Justice Reform Act ("CJRA") has been a lightning rod for frustrations about crime, even when such complaints are unsubstantiated by data.³ **It is easier to blame the law than face the truth.** The truth is that until issues used like housing insecurity, untreated physical and mental health conditions, substance use, or unemployment are addressed, the people we represent are less able to move away from involvement with the criminal legal system. The future of public safety is, in part, a public defense system that builds teams around clients and uses a combination of non-lawyer advocates and social workers to connect clients to whatever they need to keep them from coming back. History has proven that overincarceration does not work. Innovative delivery of defense services is the path forward.

Advocate Programs Work

This year, NJ OPD will embark on a defense advocate pilot program, which involves adding two or three non-lawyer advocates to at least three of our twenty-one county offices.⁴ The advocates will work in concert with our attorneys and our clients to develop pre-trial service plans and work within the communities we serve to connect people to the services they need.

Services exist. There are many providers out there capable of providing a wide range of programs that can help our clients. Some of them are large multi-million-dollar corporations. Others are small support groups with phenomenal track records and no state or private funding. **The problem is not programs; it is plugs.** The way our public defender system currently operates, it is no one's job to engage with clients on their service options and to plug them into the constellation of programs they need to be successful. **NJ OPD is transforming our practice model to do just that.**

The Philadelphia Public Defender added bail advocates to their pre-trial teams. Advocate involvement in cases reduced clients' likelihood of bail violation by 64%. The same advocate program reduced future arrests by 26%.

³ "Nearly all defendants released successfully complete their pretrial period without acquiring a new charge, with the rate of rearrest for very serious crimes at less than 1% annually since 2018." Appearance rates have increased. Report of the Reconvened Joint Committee on Criminal Justice, New Jersey Judiciary, June 2023, page 2. Both violent crime and property crime is down in New Jersey since the implementation of CJRA. *Analyzing Cash Bail Reform*, The Third Way, July 11, 2023 <https://www.thirdway.org/memo/analyzing-cash-bail-reform> Moreover, we should not gloss over the fact that bail reform allowed us to do something we had not previously been able to do under the law – assess the risk a person poses to the community to making detention decisions. See also Administrative Office of the Courts, Annual Report to the Governor and the Legislature, January 1 to December 31, 2021, <https://www.njcourts.gov/sites/default/files/courts/criminal/criminal-justice-reform/cjr2021.pdf>

⁴ Pilot programs will begin in Hudson (3 advocates), Monmouth (2 advocates), and Atlantic (2 advocates) counties.

Defender-led advocate programs are simple. They are cost effective. They work. In 2017, the Defender Association of Philadelphia added bail advocates to their pre-trial teams. Advocate involvement in cases reduced clients' likelihood of bail violation by 64%. The same advocate program reduced future arrests by 26%.⁵

The Philadelphia program also **reduced racial disparities** in the bail system. "In Philadelphia, 59% of people facing criminal charges are Black, yet 66% of defendants who are detained pretrial are Black. The estimates ... suggest that, other things being equal, if bail advocates were available to all people facing criminal charges, only 58% of pretrial detainees would be Black, thereby eliminating the increase in disparity observed due to pretrial detention. Bail advocates thus provide one of the first examples of a pretrial intervention shown to reduce disparities in an experimental evaluation."⁶ In New Jersey, the "percentage of jail inmates identified as Black has continued to increase, even since implementation of initial CJR reforms."⁷ This leads to racial disparities in conviction rates and to our continued, unwanted position as the national leader in state prison racial disparities.⁸

Why does it work when public defender teams fill this role?

1. **Our clients trust us.** That trust is enshrined in full, legally protected confidentiality. This protection fosters an environment in which clients confidentially disclose to us needs that Courts, prosecutors, and service providers may never know, which means we are in the best position not only to propose pre-trial release plans to the court but to ensure these plans meet individual client needs and that clients get on board and follow through.
2. **Our pre-trial clients are innocent.** Forcing innocent people into programs they do not choose contradicts the fundamental principles of our justice system.
3. **Pre-trial services are not one-sized fits all.** There are many service providers out there. Some are large. Some are very small but provide unique services that some of our clients need to thrive. Clients need access to the entire universe of services provided in their communities to be able to customize a program that is right for them.

The "Increased Connections to Resources" Section of the (Recommendations 14-17) as well as Recommendation 24 of the Report of the Reconvened Committee suggest funding service providers and pre-trial service coordinators within pre-trial services.⁹ NJ OPD asks that the Legislature fund a public defender-led advocate programs instead of or in addition to these programs. Public defender-led programs are less expensive to taxpayers, improve outcomes, and prevent re-arrest. They have proven effective across the country at a fraction of the cost of court-mandated or privatized services.

⁵ Heaton, P. (Spring 2021), *Enhanced Public Defense Improves Pre-trial Outcomes and Reduces Racial Disparities*. *Indiana Law Journal*, 98(3) <https://www.repository.law.indiana.edu/cgi/viewcontent.cgi?article=11415&context=ilj>

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⁸ DiFillipo, Dana, "Annual Prison Count Shows Racial Disparities Behind Bars," *New Jersey Monitor*, April 10, 2023, <https://newjerseymonitor.com/2023/04/10/annual-prison-count-shows-racial-disparities-persist-behind-bars/>
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⁹ NJ OPD had no plans to move to a holistic defense model at the time the report was generated, therefore, there was no discussion in the CJRA Committee about funding such a program.

Holistic Defense Lowers Costs to Taxpayers

In addition to lowering rates of re-arrest, investing in holistic defense also significantly lowers costs to our pre-trial system, county jails, and Department of Correction. Holistic defense programs in Santa Barbara resulted in an annual savings of \$250,000 to taxpayers.¹⁰ A ten-year study of Bronx Defender's holistic model saved taxpayers \$165 million on housing costs alone with no increase in recidivism.¹¹ The Kentucky

A ten-year study of Bronx Defender's holistic model saved taxpayers \$165 million on housing costs alone with no increase in recidivism.

A Kentucky Department of Public Advocacy holistic defense program reported a return of \$5.66 to taxpayers for every dollar spent on holistic defense. National studies show a \$3-6 return on similar investments.

Department of Public Advocacy's holistic-model defense program reported a return of \$5.66 to taxpayers for every dollar spent on social workers assigned to work as part of holistic teams.¹²

There is also the question of costs associated with moving cases more expeditiously through our justice system. Although judicial efficiency should never dictate case outcomes, the problem of backlog in New Jersey courts, particularly in the wake of the COVID pandemic, is real. It stands to reason that involvement of advocates up front

would result in quicker access to services and faster case resolution for those moving from pre-trial supervision to probationary sentences.¹³

OPD-NJ is partnering with **Stanford University and the University of Pennsylvania** to study the speed with which advocate-involved cases resolve. The study will also gauge more traditional metrics such pre- and post-trial rearrest rates, outcomes for an advocate v. non-advocate involved cases, and the impact of holistic defense models on the racial disparities that plague New Jersey prisons.

Suggested Amendment to Recommendation 29

We are grateful to Vice Chair Pou for introducing Senate Bill 2437, which mirrors Recommendation #29.¹⁴ The legislation would authorize NJ OPD to assume representation of clients accused of violating domestic violence restraining orders. These individuals are currently represented by pro bono lawyers from the New Jersey State Bar's "Madden list," a list of lawyers who get assigned to court appointed cases to meet their pro bono legal practice

¹⁰ Harris, H.M. (July 2020). Building Holistic Defense: The Design and Evaluation of a Social Work Centric Model of Public Defense. Criminal Justice Policy Review (31)6: 800-832.

¹¹ Harris, H.M. (July 2020). Building Holistic Defense: The Design and Evaluation of a Social Work Centric Model of Public Defense. Criminal Justice Policy Review (31)6: 800-832.

¹² Alternative Sentencing Worker Program (May 2016), Kentucky Department of Public Advocacy, [DPA-ASW-UK-Outcome-Study-FY-2014.pdf \(ky.gov\)](#)

¹³ Seventy percent of all New Jersey pre-trial cases result in probation.

¹⁴ The suggested amendment also indirectly addresses Recommendation 28 in that partnerships with social workers put NJ OPD would be in a better position to evaluate appropriate service providers.

requirements. Madden list attorneys often have little to no experience in criminal or family law, which results in case delays and subpar representation.

NJ OPD welcomes the opportunity to assume this representation, however, we ask that the bill be amended to require a combination of social workers and non-lawyer advocates in addition to attorneys to work as part of public defender teams. These non-lawyer advocates would work with attorneys and the accused with three goals in mind: 1) connecting clients to services and providing counseling to break and end the cycle of domestic violence; 2) helping attorneys understand the dynamics of domestic violence, how to work with domestic violence witnesses in the legal process without causing them additional trauma, and providing ongoing attorney training; and 3) working with domestic violence survivor organizations, treatment providers, and law enforcement agencies to integrate restorative justice models into the practice. This proposal presents a unique opportunity to build, from the ground up, a holistic defense model in a space that desperately needs it, one that would incorporate best practices from jurisdictions around the country. It can only be done properly if funding for social workers and advocates is written into the bill and funded alongside the attorneys and support staff required.¹⁵

This is an area in which all stakeholders can come together to change outcomes for survivors of domestic violence and those who have caused the harm. As the Report of the Reconvened Joint Committee on Criminal Justice indicated, “Domestic violence causes an array of direct and indirect harms to victims, as well as children and other witnesses. Leaders of all branches of government, as well as advocates and community members, continue to work together to identify and implement strategies to stop the cycle of abuse, protect victims, and facilitate rehabilitation for perpetrators.”¹⁶ NJ OPD has been working closely with domestic survivor organizations to think through the ideal way to build out this practice.

Fund Public Defender-Led Re-Entry Pilots

The focus of this Committee hearing is pre-trial justice, so studies about the additional impact of holistic defense were omitted from the above discussion. It is, however, worth briefly noting that holistic models have been proven to dramatically reduce the length of prison sentences and to defer more people from prison into probationary or diversionary programs. There is no evidence to suggest that the decrease in prison years leads to increased recidivism. A sampling of studies is listed in footnote 7.¹⁷ NJ OPD is in the process of creating a pilot program that uses holistic

¹⁵ NJ OPD is the only statewide public defender office in the nation that does not have social workers on staff.

¹⁶ Report of the Reconvened Joint Committee on Criminal Justice, New Jersey Judiciary, June 2023, page 68.

¹⁷ Yarosky, A. (June 2018). *The Impact of Early Representation: An Analysis of the San Francisco Public Defender’s Pre-Trial Release Unit*. California Policy Lab. <https://www.capolicylab.org/wp-content/uploads/2018/06/Policy-Brief-Early-Representation-Alena-Yarosky.pdf>.

Harris, H.M. (July 2020). *Building Holistic Defense: The Design and Evaluation of a Social Work Centric Model of Public Defense*. *Criminal Justice Policy Review*(31)6: 800-832.

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Steinberg, R. (Spring 2013). *Heeding Gideon’s Call in the Twentyfirst Century: Holistic Defense and the New Public Defense Paradigm*. *Washington and Lee Law Review*, 70(961). <https://scholarlycommons.law.wlu.edu/wlulr/vol70/iss2/6/>

Ostrom, B.J. & Bowman, J. (September 17, 2021). *The Evolving Character of Public Defense: Comparing Criminal Case Processing Effectiveness and Outcomes Across Holistic Public Defense, Traditional Public Defense, and*

defense teams to lower recidivism for people re-entering society after serving prison sentences for nonviolent offenses. We welcome the opportunity to discuss that program with interested legislators at a more appropriate time. Public defender-led holistic re-entry models save taxpayer dollars in reduced prison costs and make the public safer by lowering recidivism rates.

The New Jersey Office of the Public Defender is the largest criminal defense firm in the state of New Jersey. We welcome further opportunities to offer our perspective and to exchange ideas with members of this Committee on creating a fairer and more equitable legal system for all.

Privately Retained Counsel. *Southern California Interdisciplinary Law Journal*, 30(611).

<https://gould.usc.edu/why/students/orgs/ilj/assets/docs/30-3-Ostrom.pdf>.

Buchanan, S. & Orme, J. (2019). Impact of Social Work Practice in Public Defense. *Journal of Social Service Research*, 45(3): 336-347. DOI: 10.1080/01488376.2018.1480559.

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AMERICAN CIVIL LIBERTIES UNION
FOUNDATION

New Jersey

P.O. Box 32159
Newark, NJ 07102

Tel: 973-642-2086
Fax: 973-642-6523

info@aclu-nj.org
www.aclu-nj.org

ALEXANDER SHALOM
Senior Supervising Attorney and
Director of Supreme Court Advocacy

973-854-1714
ashalom@aclu-nj.org

American Civil Liberties Union of New Jersey
Testimony on Criminal Justice Reform
to the
Senate Judiciary Committee
March 7, 2024

My name is Alexander Shalom and I'm Senior Supervising Attorney and Director of Supreme Court Advocacy at the American Civil Liberties Union of New Jersey. Thank you, Chairman Stack and members of the Judiciary Committee, for bringing together stakeholders for a thoughtful conversation about bail reform and other criminal justice reform priorities in New Jersey.

Police and politicians unfairly scapegoat bail reform. The law gets blamed for problems it does not cause and, in fact, it gets blamed for problems that are not actually problems. When stripped of rhetorical flourishes and spin, the data shows that bail reform – though, of course, imperfect – has been a resounding triumph. We must not abandon the tools or principles that have enabled that success.

Critics of bail reform tell us that it creates a system that provides no consequences generally and no jail time, specifically, for people who commit serious crimes. But let's be sure we understand what bail reform impacts and what it does not: the Criminal Justice Reform Act changed how we determine who to jail *before trial*. It has absolutely no bearing on the penalties that attach if a person gets convicted of a crime. A crime that carried a five-year prison sentence in 2016 carries a five-year sentence today. Bail reform produced no change in the role that prosecutors play in deciding which cases to push to trial, which ones to offer plea bargains for, and which ones to dismiss. In 2016, prosecutors had virtually unbridled discretion to decide whether to offer plea bargains or dismiss cases and today that discretion remains unchanged.

But critics nonetheless raise concerns about the rapid release of people from jail and complain that pretrial jailing no longer serves the punitive or deterrent role that it used to play. Let me be crystal clear about this: the Eighth Amendment to the United States Constitution forbids using pretrial jailing as punishment. There are limited permissible purposes for jailing a person who is presumed innocent; punishment is not among them.¹ So, if police and prosecutors want to incarcerate a person, there remains a simple, constitutional way to do that: convict them.

¹ *Stack v. Boyle*, 342 U.S. 1, 4 (1951) (“right to freedom before conviction . . . serves to prevent the infliction of punishment prior to conviction”).

It is one thing to conclude that any rise in crime cannot be blamed on bail reform, but one must also challenge the assumption that there has been a rise in crime in the first place. Critics of bail reform – who want either a return to the old bail system where people were jailed or released based on poverty or wealth rather than the risk they pose or want a system that routinely jails people who the Constitution says are innocent – would have us believe that crime is surging and that we’ve never been less safe.

That couldn’t be further from reality. Critics claim that assaults, threats, and stalking all increased as a result of bail reform. But there was an eight percent drop in those crimes from 2022 to 2023.² Critics paint a picture of a world where sexual assaults are on the rise. In fact, there were about half as many sexual offenses reported in 2023 as there were in 2022.³ And those crimes are not anomalies. New Jersey saw decreases in homicides, kidnappings, robberies, burglaries, and thefts from 2022 to 2023.⁴ And those numbers are also down since 2017, when bail reform went into effect.⁵ Gun crime is down too.⁶

Despite positive progress on crime, not all New Jerseyans feel safe. Across the country – spurred by salacious headlines and reporting that does not focus on data – a record-high number of people believe crime is on the rise.⁷ But despite those perceptions and critics suggesting gloom and doom, New Jersey actually ranks as the single safest state in the United States.⁸

Public safety is a significant indicator of the success of bail reform. But it’s not the only one. Court appearance rates have been high since the inception of the Criminal Justice Reform Act, but in recent years they have increased to astonishingly high rates.⁹ New Jersey’s bail reform effort,

² New Jersey Office of the Attorney General, Criminal Justice Data Dashboard, Charge Demographics Search, <https://www.njoag.gov/justicedata/> (2023: 28,664; 2022: 31,277).

³ *Id.* (2023: 1,640; 2022: 3,455).

⁴ *Id.* (homicides – 2023: 269; 2022: 426; kidnappings – 2023: 935; 2022: 1,071; robberies – 2023: 1,183; 2022: 1,407; burglaries – 2023: 2,480; 2022: 2,643; thefts – 2023: 12,093; 2022: 12,641).

⁵ *Id.* (homicides – 2023: 269; 2017: 563; kidnappings – 2023: 935; 2017: 943; robberies – 2023: 1,183; 2017: 2,409; burglaries – 2023: 2,480; 2017: 4,136; thefts – 2023: 12,093; 2017: 18,473).

⁶ Amanda Wallace, NorthJersey.com, Gun violence continues to drop in New Jersey, state officials say. These are the stats (Jan. 4, 2024), <https://www.northjersey.com/story/news/new-jersey/2024/01/04/nj-gun-violence-stats-drop-in-2023-for-shootings-and-killings/72107904007/>.

⁷ Eric Kiefer, Newark Patch, NJ Is 'Safest' State In Nation For Violent Crime, New Study Says (Aug. 21 2023), <https://patch.com/new-jersey/newarknj/nj-safest-state-nation-violent-crime-new-study-says>.

⁸ Alec McPike, Innerbody, How Do States Rank in Crimes Against Persons? Using FBI data on crimes against persons, we determined which U.S. states are the most and least dangerous for personal safety (Aug 7, 2023), <https://www.innerbody.com/how-do-states-rank-in-crimes-against-persons>.

⁹ Administrative Office of the Courts, Annual Report to the Governor and Legislature, 2021, p. 18-19, <https://www.njcourts.gov/sites/default/files/courts/criminal/criminal-justice-reform/cjr2021.pdf>.

which differs from other states' attempts, has been hailed by people across the political spectrum as a national model.¹⁰

So, what principles have led to New Jersey's successful implementation of bail reform?

First, our system is certainly fairer for having removed money as a driving factor in determining freedom. There is simply no correlation between a person's dangerousness and the size of their wallet.

Second, our system works because it generally honors the constitutional demand that "in our society, liberty is the norm, and detention prior to trial . . . is the carefully limited exception."¹¹ That is, the broad presumption of pretrial liberty in our statute is both consistent with our values and a requirement to ensure constitutionality.

Third, our system, as initially crafted and as it has been modified over the last eight years, has been driven by data and reason not by stories and fear. When changes need to be made to the system, stakeholders should look to data and make proposals based on what the numbers suggest, not based on perceptions of those who can only see a limited portion of the whole picture.

Fourth, and perhaps most importantly, the system has been collaborative. In other jurisdictions, their versions of bail reform have been spurred by litigation and stakeholder have continued to resist the sorts of transformational changes that come only when all parties embrace the possibility of creating a better system. In New Jersey, since its inception, this has not been a partisan issue. It's no surprise that seven Attorneys General (and Acting Attorneys General) from both political parties, have seen the promise of the law and all have supported it. That is also why strange bedfellows like the people who made up the original Joint Committee on Criminal Justice and the Reconstituted Joint Committee all agree that the system works.

This does not mean the system is perfect. The Reconstituted Committee made a series of recommendations – some for courts, some for law enforcement, some for the defense bar, and yet others for the Legislature – all of which should be taken seriously. But we must ensure that whenever this body considers changes to the Criminal Justice Reform Act, it stays true to the principles that have led to its success: a deemphasis on money, a focus on freedom except in the rarest cases, data-driven analysis, and collaboration. If we do that, New Jersey can remain a national example of how bail reform can work.

¹⁰ See, e.g., Kylie Murdock & Jim Kessler, Third Way, Analyzing Cash Bail Reform, July 11, 2023, <https://www.thirdway.org/memo/analyzing-cash-bail-reform> (finding "By any reasonable measure, the New Jersey law has been a success. Tax dollars have been saved, crime is well below national averages and national trends, those released have come to trial, prison crowding has eased"); Charles McKenna and John Koufos, NJ.com, Legal experts: Data shows that New Jersey's bail reform works, Sept. 18, 2022, <https://www.njcourts.gov/sites/default/files/courts/criminal/ledgergustejrcolumn.pdf> (explaining that "We come from different sides of the criminal law spectrum but agree that New Jersey's risk-based bail system is the best model for other states to follow").

¹¹ *United States v. Salerno*, 481 U.S. 739, 755 (1987).

“Social justice should be the underlying goal of all humanity.”
-Alan V. Lowenstein, Institute Founder



TESTIMONY OF YANNICK WOOD
NEW JERSEY INSTITUTE FOR SOCIAL JUSTICE
REGARDING THE 2017 NEW JERSEY CRIMINAL JUSTICE REFORM ACT
NEW JERSEY SENATE JUDICIARY COMMITTEE
MARCH 7, 2024

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60 Park Place, Suite 511
Newark, NJ 07102-5504
ph. (973) 624-9400
fax (973) 624-0704
email: justice@njisj.org
www.njisj.org

Thank you for the opportunity to present this testimony.

My name is Yannick Wood and I am the Director of the Criminal Justice Reform Program at the New Jersey Institute for Social Justice (the “Institute”). The Institute’s advocacy empowers people of color by building reparative systems that create wealth, transform justice and harness democratic power – from the ground up – in New Jersey. I am a former prosecutor in New York City, an area that still uses the antiquated system of bail.

I would like to thank my colleagues, Ashanti Jones and Emily Schwartz for their assistance in drafting this testimony.

By this testimony, the Institute strongly urges the Legislature to strengthen the Criminal Justice Reform Act and advance other measures that will decrease detention and decrease racial disparities in the criminal justice system – and to oppose policies that will increase detention.

Introduction

The Criminal Justice Reform Act (CJRA) was landmark legislation for New Jersey. Since 2017, it has successfully eliminated a system where people were detained not based on risk but on the amount of money they had.

In New Jersey, the bail system also resulted in exacerbating racial disparities in detention. There were approximately 3000 more detained Black individuals compared with 1500 more white individuals and 1300 more “Hispanic” individuals during the bail system than during the first year of the CJRA.¹ Furthermore, Black individuals who were issued complaint warrants spent more than twice as long in jail from the issuance of their complaint to the initial pretrial release as they did after the CJRA.² Lastly, Black individuals spent over 30% more days in jail pre-CJRA.³

I previously practiced law in a jurisdiction (New York City) that still uses bail and I personally saw how people with limited resources – all too often people of color – were detained for months for lower-level crimes because they could not post several hundred dollars in bail. Often, this resulted in

individuals prematurely pleading guilty hoping that their plea could be exchanged for shorter sentences and their freedom. This bail system was more reminiscent of Victorian-era debtor's prisons – where poverty was criminalized – and less about public safety.

In an inspiring moment of unity, New Jersey's legislators, across the political spectrum, rejected this unfair bail system and established a new system where people were detained based on a risk assessment and not based on their ability to pay bail. Since then, under the CJRA, individuals have returned to court at a rate as high as 97.1% in 2020.⁴ Moreover, the vast majority of individuals that are released are not rearrested and less than 1% of released individuals, annually, have been rearrested for the most serious offenses.⁵ Furthermore, crime across New Jersey had been falling prior to the CJRA,⁶ during the CJRA,⁷ and after a momentary increase across the nation during COVID, is once again decreasing.⁸ The CJRA is a premier model for detention policy in the nation and has paved the way for Illinois' new detention law.⁹

Nevertheless, despite the successes of the CJRA and the progress we have made, stark racial disparities in detention and incarceration persist in our state. Here, a Black adult is 12 times more likely to be incarcerated than a white adult - the worst disparity in the nation.¹⁰ Additionally, New Jersey's jail population has become more racially disparate since the CJRA was enacted.¹¹ In 2021, 60% of those detained in New Jersey's jails were Black¹² in a state that is just over 15% Black.¹³ Unsurprisingly, New Jersey's prisons mirror these disparities; 59% of those incarcerated are Black.¹⁴

As the Legislature considers legislation on issues concerning the justice system in general and the CJRA in specific, the Institute strongly urges legislators to advance measures that will decrease detention and will decrease racial disparities. Simultaneously, we strongly urge legislators to oppose policies that will increase detention.

We urge the Legislature to do the following:

- 1) Make the following amendments to the point-based Public Safety Assessment portion of the CJRA:
 - Eliminate the "Age at current arrest" penalty so that people under the age of 22 are not penalized solely on the basis of their age.
 - Establish a requirement that people over 55 have their age be a mitigating factor to subtract one or two points from their FTA score.
 - The "Prior failure to appear older than 2 years" penalty should be modified so that after five years after the resolution of the case, the failures to appear will no longer be considered in the Public Safety Assessment.
 - The "Prior misdemeanor conviction," "Prior indictable offense convictions," and "Prior violent conviction" penalties should be modified so that after seven years, these convictions will no longer be considered in any calculations.

- The "Prior sentence to incarceration" penalty should be modified so that it only considers incarceration for over one year.
- 2) Increase funding for pretrial services.
 - 3) Fund the positions of "pretrial coordinators" who are trained in social work that will be able to steer individuals with pending cases to pretrial services.
 - 4) Oppose measures that will increase detention.

By implementing these recommendations, the Legislature can strengthen the CJRA and reduce the stark racial disparities in detention in our state.

I. We urge the Legislature to make the following amendments to the point-based Public Safety Assessment portion of the CJRA.¹⁵

Eliminate the "Age at current arrest" penalty so that people under the age of 22 would not be penalized solely on the basis of their age.

When individuals are arrested, they are given a Public Safety Assessment (PSA) which provides a recommendation to the judge as to whether they should be released, released with supervision or detained.¹⁶ This assessment is comprised of a score related to the risk of their Failure to Appear (FTA) as well as the risk for New Criminal Activity (NCA).¹⁷ Currently, young people under the age of 22 receive two points to their FTA score which will result in heightened levels of monitoring and could result in a recommendation for detainment. This policy makes it more likely that younger people will be detained and set on a track for incarceration.¹⁸

Establish a requirement that people over 55 have their age be a mitigating factor to subtract one or two points from their FTA score.

On the other hand, older age is not considered in determining an individual's FTA score. This conflicts with data which shows that court appearance rates generally increase with age.¹⁹ Also, incarceration increase the risk of age-related illnesses in older individuals and can intensify pre-existing age-related illnesses.²⁰ Public safety is not advanced by detaining and incarcerating older people. Instead, the Legislature needs to prioritize keeping these individuals at liberty and providing them with community-based resources.

Modify the "Prior failure to appear older than 2 years" penalty so that after five years after the resolution of the case, the failures to appear will no longer be considered in the PSA.

Data indicates that FTAs are correlated with larger issues of poverty and disproportionately impact Black individuals.²¹ New Jersey has profound racial wealth disparities as highlighted in our most recent data brief entitled *Two New Jerseys: One State of Inequity*.²² These disparities could result in increased FTAs for communities of color and these FTAs will perpetually put people at increased risk of detention. One solution is to limit consideration of FTAs older than two years to avoid penalizing people for FTAs which are older and are likely less predictive.

Modify the "Prior misdemeanor conviction," "Prior indictable offense convictions" and "Prior violent conviction" penalties so that after seven years, these convictions will no longer be considered in any calculations.

Older convictions are less predictive of new criminal arrests.²³ The PSA is required to be data driven.²⁴ We strongly urge this Legislature to make the PSA reflect these data points.

The "Prior sentence to incarceration" penalty should be modified so that it only considers incarceration for over one year.

Currently, periods of incarceration as few as 14 days can add two points to the New Criminal Arrest (NCA) score. Data shows that Black individuals are more likely to have negative interactions²⁵ with law enforcement and are disproportionately detained.²⁶ Resultantly, this specific penalty reinforces these racial disparities. Instead, the PSA should focus on incarceration for more serious offenses as measured by incarceration periods greater than one year.

II. Increase funding for pretrial services.²⁷

The Institute recommends increased funding for the state's Pretrial Services with funds dedicated to providing resources to support individuals awaiting trial. The judiciary's CJRA report detailed how there are approximately 46,000 individuals monitored by Pretrial Services, yet this monitoring does not include funding for support services.²⁸ This funding could provide a critical opportunity to address mental health, substance use and other behavioral health concerns thereby reducing the chances for recidivism and eventually detention. Lastly, it is crucial that individuals, with the advice of their attorneys, be afforded the option to use or not to use these services. If an individual chooses to enroll in services, it makes it more likely that they will be successful throughout the service.

III. Adequately fund the positions of "pretrial coordinators" who are trained in social work that will be able to steer individuals with pending cases to pretrial services.²⁹

With the expansion of pretrial services, there should be "pretrial coordinators" who can help navigate individuals to resources. Preferably, these pretrial coordinators should have training in social work and could even be "community navigators" or community-based organizations that are skilled in connecting individuals with local resources in their own neighborhoods.

IV. Oppose measures that will increase detention.³⁰

The Institute appreciates that New Jerseyans are concerned about crime and public safety. But drafting law that rolls back the CJRA to increase detention will not make us safer and will only further bolster a racist system of mass incarceration, the brunt of which is felt by Black communities. Over the past several years, there have been multiple legislative attempts to roll

back the CJRA by changing the presumptions for release, and by enumerating particular offenses. Some attempts included shifting presumptions for Graves Act offenses³¹ and auto crimes.³² Each successive effort appears to open the door for additional efforts. These efforts do not address the root causes of crime. Instead, the Legislature needs to support efforts to provide critically needed services to individuals. It is crucial to remember that the basis for implementing the CJRA was the recognition that it was better to detain a limited number of people based on a risk assessment than their ability to pay. If detention is expanded under the CJRA, in some ways it may make individuals worse off than in the bail system – more people would be detained with no chance of pretrial release. New Jersey must hold fast to the principles of the CJRA and must resist the slippery slope to exacerbating mass detention.

Conclusion

The CJRA has been an absolutely critical step in tackling economic inequities in the criminal justice system. It has been successful in ensuring that people return to court and it protects New Jerseyans. Despite the law's success, stark racial disparities in detainment persist. By implementing our recommendations, this Legislature can improve the CJRA, further reduce detention and reduce racial disparities. Thank you for considering this testimony.

¹ 2018 Report to the Governor and the Legislature, N.J. Cts., 27 (Apr. 2019), <https://www.njcourts.gov/sites/default/files/2018cjrannual.pdf>; The Institute generally uses the terms "Latina/Latino" for the community, but the source uses the term "Hispanic."

² N.J. Cts., *supra* note 1, at 27.

³ *Id.*

⁴ Report of the Reconvened Joint Committee on Criminal Justice, N.J. Sup. Ct., 2 (Jun. 8, 2023), <https://www.njcourts.gov/sites/default/files/courts/criminal/criminal-justice-reform/reconvenedcommreport.pdf>.

⁵ *Id.*

⁶ CRIME DATA, STATE OF N.J., <https://www.nj.gov/ni/safety/features/crime.html> (last visited Mar. 6, 2024).

⁷ *Id.*

⁸ Michael Symons, *How Bad are Car Thefts in New Jersey? The Real Numbers for 2022*, NEW JERSEY 101.5 (Dec. 6, 2022), <https://nj1015.com/car-thefts-new-jersey-2022/>; Homicides and Shootings Decline in New Jersey's Capital City (Aug. 31, 2022), <https://www.trentonnj.org/CivicAlerts.aspx?AID=762>; Coming Off Two Record Years, Homicides and Shootings Decline in New Jersey's Capital City, MIDJERSEY.NEWS (Aug. 31, 2022), <https://midjersey.news/2022/08/31/coming-off-two-record-years-homicides-and-shootings-decline-in-new-jerseys-capital-city/>; Governor Murphy Delivers Fiscal Year 2025 Budget Address, State of N.J., (Feb. 27, 2024), <https://www.nj.gov/governor/news/news/562024/approved/20240227c.shtml>.

⁹ Jessica D'Onofrio & Sarah Schulte, *Illinois becomes first state to eliminate cash bail as Pre-Trial Fairness Act takes effect*, ABC7 (Sept. 18, 2023), <https://abc7chicago.com/no-cash-bail-illinois-abolish-eliminates/13796013/>.

¹⁰ ASHLEY NELLIS, THE COLOR OF JUSTICE: RACIAL AND ETHNIC DISPARITY IN STATE PRISONS, THE SENT'G PROJECT 10 (Oct. 13, 2021) <https://www.sentencingproject.org/app/uploads/2022/08/The-Color-of-Justice-Racial-and-Ethnic-Disparity-in-State-Prisons.pdf>.

¹¹ Annual Report to the Governor and the Legislature, N.J. Cts., 27 (Apr. 2019), <https://www.njcourts.gov/sites/default/files/courts/criminal/criminal-justice-reform/cjr2021.pdf>.

¹² N.J. Sup. Ct., *supra* note 4, at 4.

¹³ QUICKFACTS: NEW JERSEY, U.S. CENSUS BUR., <https://www.census.gov/quickfacts/NJ> (last visited Mar. 5, 2024).

¹⁴ *Incarcerated Persons in New Jersey Correctional Institutions on January 3, 2023, By Race/Ethnic Identification*, N.J. Dept. Corr., 1 (2023), https://www.nj.gov/corrections/pdf/offender_statistics/2023/By_Race-Ethnicity_2023.pdf.

¹⁵ In 2023, the New Jersey Supreme Court formed a committee of stakeholders to review the CJRA. Law enforcement, legislators, prosecutors, attorneys and judges met over several months to review all aspects of the CJRA to create a comprehensive report that may be used to inform any legislative effort to amend the CJRA. This will advance report recommendation 30. N.J. Sup. Ct., *supra* note 4, at 71-72.

¹⁶ *Public Safety Assessment New Jersey Risk Factor Definitions – December 2018*, N.J. Cts., 1, <https://www.njcourts.gov/sites/default/files/psariskfactor.pdf>.

¹⁷ *Id.*

¹⁸ *How the Brain Develops* PSYCH. TODAY, <https://www.psychologytoday.com/us/basics/neuroscience/how-the-brain-develops> (last visited Mar. 5, 2024)(However, this age penalty ignores cognitive science that recognizes that young people still have developing brains with reduced capacity for executive functioning); The PSA policy of penalizing young age also conflicts with sentencing law which permits consideration of young age as a mitigating circumstance to lessen sentencing. See N.J. Stat. Ann. § 2C:44-1(b)(14)(West 2023).

¹⁹ Court appearance rates generally increase with age. See *North Carolina Court Appearance Project*, 10 (Apr. 22, 2022), <https://cjlil.sog.unc.edu/wp-content/uploads/sites/19452/2022/04/NC-Court-Appearance-Project-Report-4-22-22.pdf>.

²⁰ Tina Masci & Adriana Kaye, *Incarcerated Older Adults*, GRANTMAKERS IN AGING, <https://www.giaging.org/issues/incarcerated-older-adults/> (last visited Apr. 21, 2023).

²¹ Haley R. Zettler and Robert G. Morris, *An Exploratory Assessment of Race and Gender-Specific Predictors of Failure to Appear in Court Among Defendants Released via a Pretrial Services Agency*, 40 CRIM. J. REV.

417-430 (2015),

https://www.researchgate.net/publication/276133329_An_Exploratory_Assessment_of_Race_and_Gender-Specific_Predictors_of_Failure_to_Appear_in_Court_Among_Defendants_Released_via_a_Pretrial_Services_Agency.

²² N.J. Inst. For Soc. Just., *Two New Jerseys: One State of Inequity* (2024), <https://njisi.org/print/stateofinequity.pdf> (New Jersey has a \$300,000 racial wealth gap between White and Black households, as much as a 40% gap in the home ownership in Essex County and other county level economic disparities).

²³ Megan C. Kurlychek, Robert Brame and Shawn D. Bushway, *Scarlet Letters and Recidivism: Does an Old Criminal Record Predict Future Offending?*, 5 CRIM. & PUB. POL'Y. 483-504 (2006), <https://onlinelibrary.wiley.com/doi/abs/10.1111/j.1745-9133.2006.00397.x>.

²⁴ N.J. Stat. Ann. § 2A:162-25(c)1 (West 2021).

²⁵ Camille Lloyd, *For Black Americans, 41% of Police Encounters Not Positive*, GALLUP (JUL. 30, 2020), <https://news.gallup.com/poll/316247/black-americans-police-encounters-not-positive.aspx>.

²⁶ Admin. Off. Cts., *supra* note 12, at 4; U.S. Census Bur. *supra* note 13.

²⁷ This will advance Report Recommendation 16. See Admin. Off. Cts., *supra* note 4, at 42.

²⁸ *Id.* at 39.

²⁹ *Id.* at 41.

³⁰ *Id.* at 58-59.

³¹ Assemb. B. No. A2426, 220th Leg. (N.J. 2022), <https://njleg.state.nj.us/bill-search/2022/A2426/bill-text?f=PL22&n=43>.

³² Assemb. B. No. A4248, 221st Leg. (N.J. 2024); Assemb. B. A5842, 221st Leg. (N.J. 2024); Assemb. B. No. A4018, 221st Leg. (N.J. 2024).

NEW JERSEY [REDACTED] POLICY PERSPECTIVE [REDACTED]

TESTIMONY OF AWINNA MARTINEZ, POLICY DIRECTOR NEW JERSEY POLICY PERSPECTIVE BEFORE SENATE JUDICIARY COMMITTEE, MARCH 7, 2024

Good morning, Chairman Stack and Members of the Senate Judiciary:

My name is Awinna Martinez. I am the Policy Director of the New Jersey Policy Perspective, a nonpartisan think tank focused on state-level policies that advance economic, social, and racial justice. Thank you for having me here today.

Our stated mission at NJPP is to ensure that all of New Jersey's residents enjoy lives of dignity, opportunity, and economic security. We know the criminal legal system has everlasting and harsh consequences on families and children, financial stability, pathways to education, the workforce, and the fabric of our communities. It is widely known that interactions with the criminal legal system disproportionately impact Black and brown communities.

Criminal legal system reform should not be taken lightly but driven by data and research to create policies that promote public safety while ensuring a fair and equitable system.

New Jersey's 2017 Criminal Justice Reform (CJR) is a policy informed by long-standing research¹ that eliminating cash bail and reducing pretrial detention address racial disparities in our system without negatively impacting public safety. An early evaluation of the CJR found that arrests dropped significantly in the year following CJR implementation.² Seven years later, New Jersey has become a pretrial justice leader nationally for significantly decreasing the use of pretrial detention while maintaining the same or better crime rates.³

More than 400,000 individuals are held pretrial across the country, with most unable to pay bail. It is significant that we can say that here in New Jersey, we are not contributing to this alarming trend. We have eliminated "the debtors' prison" that makes up many other places nationwide.

¹ Schnake, Timothy R., *Fundamentals of Bail: A Resource Guide for Pretrial Practitioners and a Framework for American Pretrial Reform*, September 2014, Chapter 4: Pretrial Research, pp 64-85, <http://static.nicic.gov/s3.amazonaws.com/Library/028360.pdf>

² Anderson et.al, *Evaluation of Pretrial Justice System Reforms that Use the Public Safety Assessment: Effects of New Jersey's Criminal Justice Reform*, November 2019, https://www.mdrc.org/sites/default/files/PSA_New_Jersey_Report_%231.pdf

³ Staudt, Sarah, *Releasing people pretrial doesn't harm public safety*, Prison Policy Initiative, July 6, 2023, <https://www.prisonpolicy.org/blog/2023/07/06/bail-reform/>

NEW JERSEY [REDACTED] POLICY PERSPECTIVE [REDACTED]

I want to emphasize how important it is for the state to build on the success of our bail reform laws by investing in better support for justice-involved individuals rather than resorting to misguided rollbacks in response to political pressures. There is no evidence linking increases in crime to individuals on pretrial release.

Our communities are better served by policymakers who focus on strengthening our pretrial system. First, this means committing to a mission focused on treating pretrial services separately from all other stages of the criminal legal system process—pretrial is not probation, parole, or reentry. American jurisprudence presumes these individuals are innocent until the resolution of their case says otherwise. Adopting proposals to increase the number of people exposed to the harms of pretrial detention undercuts the work of this legislature and what the evidence tells us.

Pretrial's key players (judges, defense attorneys, prosecutors, and pretrial staff) should operate under the same mission rather than relying on the harms and pressures imposed by pretrial detention. Ensuring the criminal legal system upholds the fundamental rights of a presumption of innocence and due process while delivering timely case resolutions is the way to achieve just, fair, and equitable outcomes.

Second, investing in pretrial services means allocating more funding statewide. In New Jersey, the quality of pretrial services should remain consistent across all counties, no matter where an individual's criminal matter is situated. Consistency ensures everyone receives the necessary support to navigate their pretrial experience successfully. Compliance with conditions of release and success in the pretrial phase can be achieved through investments in resources in pretrial support systems and agencies that already have a touch point with defendants, such as the Office of the Public Defender and county-level pretrial services staff. Connection to these resources can address an individual's housing, education, employment, and health care needs.

I want to close by sharing that before joining NJPP, I spent my career focused on criminal legal reform, focusing on diversion and alternatives to incarceration. For three years, I oversaw a pretrial services agency entirely staffed by case managers and social workers, whose main goals were to respond to individual needs and provide resources and programming when possible.

Drawing from personal experience, I witnessed firsthand the transformative impact of increased funding on staffing levels and providing supportive services that did not rely on a law enforcement approach. We had a compliance rate of almost 90%, even during the height of the pandemic, when operations had to move remotely. We attributed this success to the supportive services model that allowed us to use a wraparound human-centric approach. These investments enable pretrial services to offer individualized attention and comprehensive case management,

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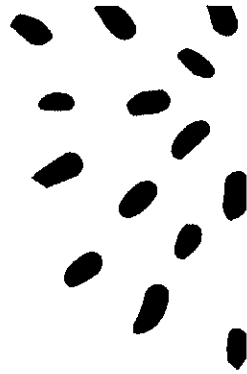
addressing any underlying needs that could hinder an individual's progress during the pretrial stage.

In New Jersey, we have seen our incarceration rate decrease significantly.⁴ This allows individuals to return home, support their families, maintain employment, and ensure some measure of stability while their case is being resolved. But we know there is more work to do. New Jersey continues to have the worst racial disparities in the country, where a Black adult is 12 times more likely to be incarcerated than a white adult. Any steps policymakers take in addressing our system should be to make it stronger—changes rooted in equity and fairness—not informed by what we *think* makes public safety work but instead by what we *know*. It is critical to understand the data and research and balance this with understanding the harms that we know occur to individuals, families, and communities when we over-police and over-incarcerate.

Thank you.

⁴ Hernandez, Amanda, *Releasing suspects pretrial doesn't lead to higher crime rates, experts say*, February 22, 2024, <https://newjerseymonitor.com/2024/02/22/releasing-suspects-pretrial-doesnt-lead-to-higher-crime-rates-experts-say/>

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**Testimony for Rev. Dr. Charles F. Boyer
 Founder and Executive Director of Salvation and Social Justice
 Before the New Jersey Senate Judiciary Committee
 March 7, 2024**

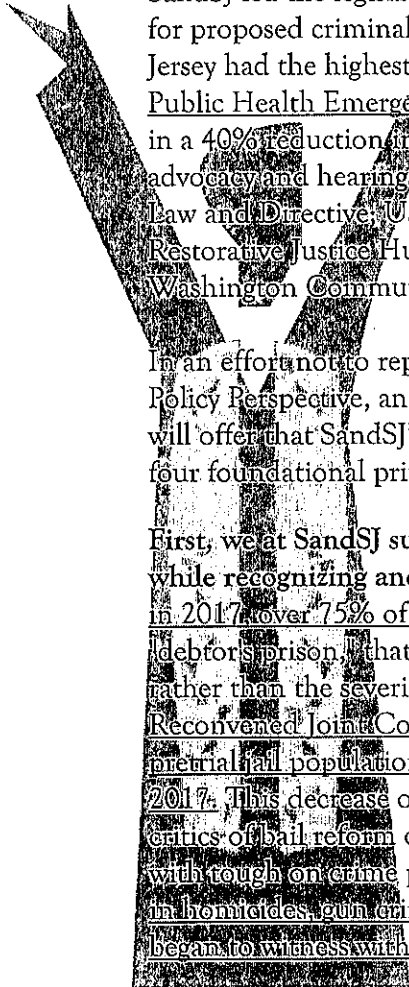
Good morning, Chairman Stack and members of the committee. My name is Rev. Dr. Charles F. Boyer, and I am the Co-founder and Executive Director of Salvation and Social Justice (SandSJ), a Black, faith-rooted, non-partisan social justice organization that seeks to liberate public policy theologically by modeling the hope and resiliency of Black faith.

I want to thank you for convening this hearing and allowing stakeholders the opportunity to weigh in on this thoughtful discussion regarding New Jersey’s criminal justice reform priorities. For years, Salvation and Social Justice has fought vigorously alongside community leaders, advocate partners and directly impacted folks to bring about a fairer, more just, and more equitable state.

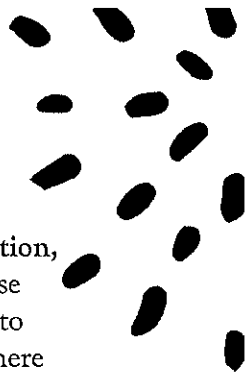
SandSJ led the legislative campaign which now requires that racial impact statements be developed for proposed criminal justice legislation. During the height of the COVID-19 pandemic when New Jersey had the highest prison death rates in the country, our advocacy led to the signing of the Public Health Emergency Credits Bill, releasing more than 8000 people from prison and resulting in a 40% reduction in the state’s prison population (the largest reduction in the nation). Our advocacy and hearings led to the adoption of critical policies such as the Independent Prosecutors Law and Directive; Use of Force Directive; the establishment of a Police Licensure Program; the Restorative Justice Hub Pilot Program; and most recently, the groundbreaking “Seabrooks-Washington Community Led Crisis Response Act.”

In an effort not to repeat what our colleagues from the ACLU-NJ, NJ Institute for Social Justice, NJ Policy Perspective, and the Office of the Public Defender have shared through their testimonies, I will offer that SandSJ’s position on criminal legal reform, particularly bail reform, rests largely on four foundational principles...

First, we at SandSJ support policy that is grounded in science about public safety and recidivism while recognizing and upholding the humanity of all people. Data shows that prior to bail reform in 2017, over 75% of individuals in pretrial detention were unable to afford bail, creating a debtors prison, that doles out punishment to the individual based on their proximity to poverty rather than the severity of the alleged crime. The June 2023 New Jersey Judiciary’s Report of the Reconvened Joint Committee on Criminal Justice demonstrates a significant decrease in the pretrial jail population (20% between 2015 and 2022) since the implementation of bail reform in 2017. This decrease occurred alongside a decline in both overall and violent crime rates. While critics of bail reform often insist that New Jersey is experiencing a spike in crime that must be met with tough on crime policies, the data does not support this. Most recent reports show a decrease in homicides, gun crimes, kidnappings, burglaries, and thefts from 2022 to 2023, a decline we began to witness with the passing of bail reform in 2017.



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Second, we understand that New Jersey exists as one of the most inequitable states in the nation, disproportionately subjecting Black residents to structurally racist systems and policies. These disparities permeate every institutional structure from health care to education and education to housing. Nowhere are these disparities starker than as it relates to the criminal legal system, where Black residents are incarcerated at 12.5 times that of white residents, and despite only comprising about 12% of the state's population, represent 59% of the prison population. Pretrial detention will only further exacerbate existing racial disparities. While New Jersey is one of the most prosperous states in the US, it has a \$300,000 racial wealth gap by which the median income of Black families is \$17,700 compared to white families whose median income is \$322,500. Monetary bail systems disproportionately affect the impoverished, leaving individuals who are unable to afford bail sitting in jail until their trial. This system has historically impacted Black communities the most and will likely continue to do so if existing bail reforms are rolled back.

Third, any system that seeks to incarcerate individuals simply because they are unable to afford bail is unjust at its core and has no place in a moral and civil society. The law dictates that individuals accused of crimes are innocent until proven guilty, however the system of pretrial detention undermines this basic legal right. There are significant dangers and harms associated with pretrial detention:

- Pretrial detention may result in the loss of employment, housing, or other streams of income or support. Detaining individuals ahead of their court date puts an undue strain on individuals and their families and denies them an opportunity to actively participate in and prepare for their own defense.
- Pretrial detention largely compromises the so-called "pursuit for justice" often subjecting individuals to more harmful outcomes not just in their personal lives but also as it relates to their legal cases. This appears in several ways. Evidence has shown that individuals who are detained pretrial are more often convicted and receive harsher sentences. Evidence also shows that those individuals who spend even a short period of time in pretrial detention will have more involvement in the criminal legal system. Data shows that the relationship between pretrial detention and rearrest was strongest for people assessed as low risk.
- We must remember that increased pretrial detention actually has a negative impact on public safety. Studies have shown that individuals who are released pretrial are less likely to re-offend compared to those who remain incarcerated. This is likely because they can maintain employment, access support services, and address the underlying issues that may have contributed to their involvement in the criminal justice system.
- Additionally, evidence supports that expanding the list of offenses for pretrial detention will only serve to further strain an already taxed jailed system, unfairly targeting Black communities, and increasing concerns about racial and socioeconomic disparities within the criminal legal system. This will undoubtedly lead to worse conditions for all incarcerated individuals, including those awaiting trial.

And lastly, our advocacy rests on a commitment to identifying, addressing, and redressing the root causes of crime in our state. Our advocacy is informed by restorative justice practices and

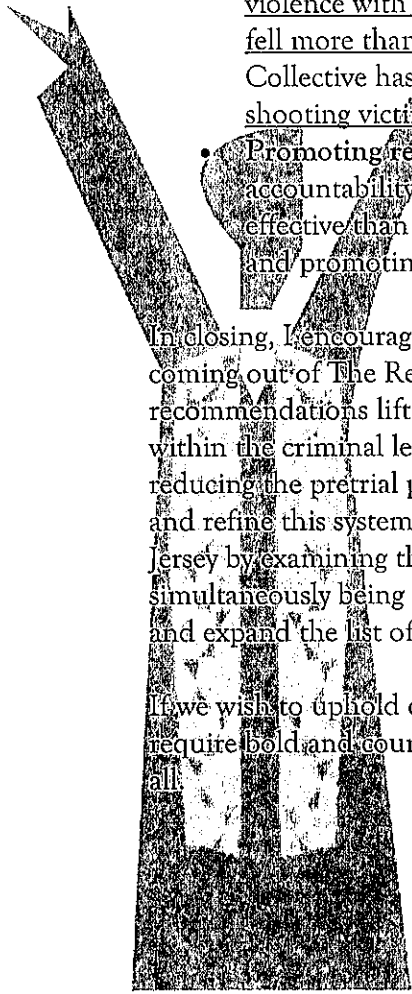
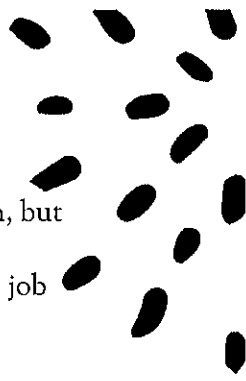
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understands that the best way to promote safer communities is not through mass incarceration, but through significant investments in the building out of social infrastructures ensuring access to quality and equitable health care; safe and affordable housing; as well as quality education and job opportunities. There must be a commitment on the part of the state to truly understand the conditions and circumstances that thrust individuals and their families into the criminal legal system, and use that understanding to support significant investments in alternatives to incarceration such as:

- **Violence interruption programs and community led crisis response teams**, which work directly with individuals and communities at risk of violence, offering support, resources, and conflict resolution strategies. Studies have shown the overwhelming effectiveness of these programs in reducing crime and recidivism where they have been implemented. While there are successful models of these programs across the nation (i.e. CAHOOTS in Eugene, Oregon; STAR in Denver, Colorado; and CRESS out of Amherst, Massachusetts), we have had our own degree of measurable success with the community led crisis response teams right here in New Jersey. The work of teams like Trenton Restorative Street Team, Paterson Healing Collective, and Newark Community Street Team has contributed to a 45% reduction in homicides in the city of Trenton, while Newark has seen a 60 year low in violence with a 15% reduction in homicide victims and a number of shooting victims that fell more than a third in 2022. In the city of Paterson, the work of the Paterson Healing Collective has contributed to a drop in violence by 35%, murders down 39%, and shooting victims down 25% compared to 2022.
- **Promoting restorative justice practices**, which focus on repairing harm, fostering accountability, and healing for both victims and offenders. This approach can be more effective than traditional punitive measures in addressing the underlying causes of crime and promoting community safety.

In closing, I encourage the Legislature and this administration to take the recommendations coming out of The Reconvened Joint Committee seriously. While far from a panacea, these recommendations lift up fundamental principles that are central to ensuring justice and equity within the criminal legal system. New Jersey's current bail reform system has been successful in reducing the pretrial population while maintaining public safety. We should continue to support and refine this system, not dismantle it. We can build on the great work we have done in New Jersey by examining the effectiveness of models in other states like New York and Illinois while simultaneously being aware of and challenging proposed legislation that seeks to erode due process and expand the list of offenses eligible for pretrial detention.

If we wish to uphold our commitment to justice and equity for all New Jersey residents, it will require bold and courageous leadership dedicated to protecting and maintaining the humanity of all.



153x

From: ols-committee-aide@web.njleg.org
Sent: Wednesday, March 06, 2024 11:56 AM
To: OLSaideSJU
Subject: testimony on crime allowed by njlegislature

the citizenry of nj is fed up with the crime going on all over nj when prosecutors allow crimes to go unpunished. we need more people in jail if they cannot live in civilization as civilized people who respect laws. this allowance of criminals to walk away with no jail time and go walkign around in public when they are criminals needs to be stopped. they should not be walking around for vast amounts of time. quick hearings and jail when guilty. people who respect the law are getting hammered by these desperado criminals aligned with illegal immigrant thugs who walk across our borders. jail them all or deport them quickly. businesses are closing down for robbery and theft. why should anyone pay if some dont pay. all of civilization sees what goes on here in lawlessness.

Sent from: jeanpublic1@gmail.com