

A VISION TO END MASS INCARCERATION IN NEW JERSEY

December 2017

ACLU
New Jersey

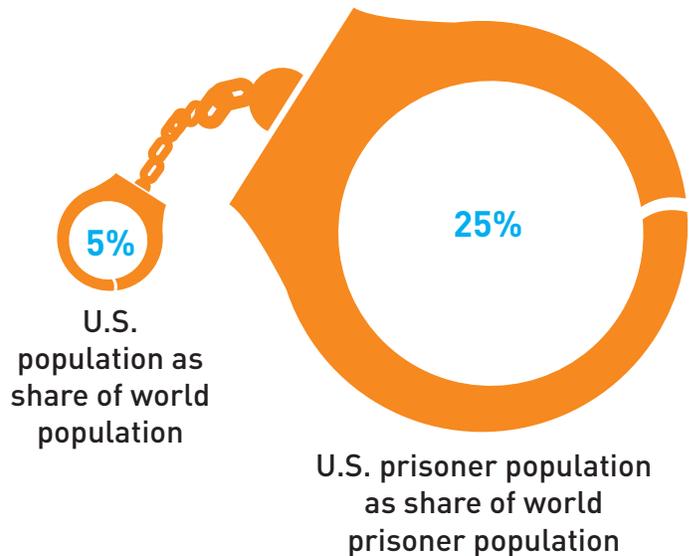
INTRODUCTION

Envisioning an End to Mass Incarceration

- The prison population has mushroomed, and people of color unfairly bear the brunt of incarceration.
- Americans across the political spectrum agree: we need bold steps to end our system of mass incarceration.

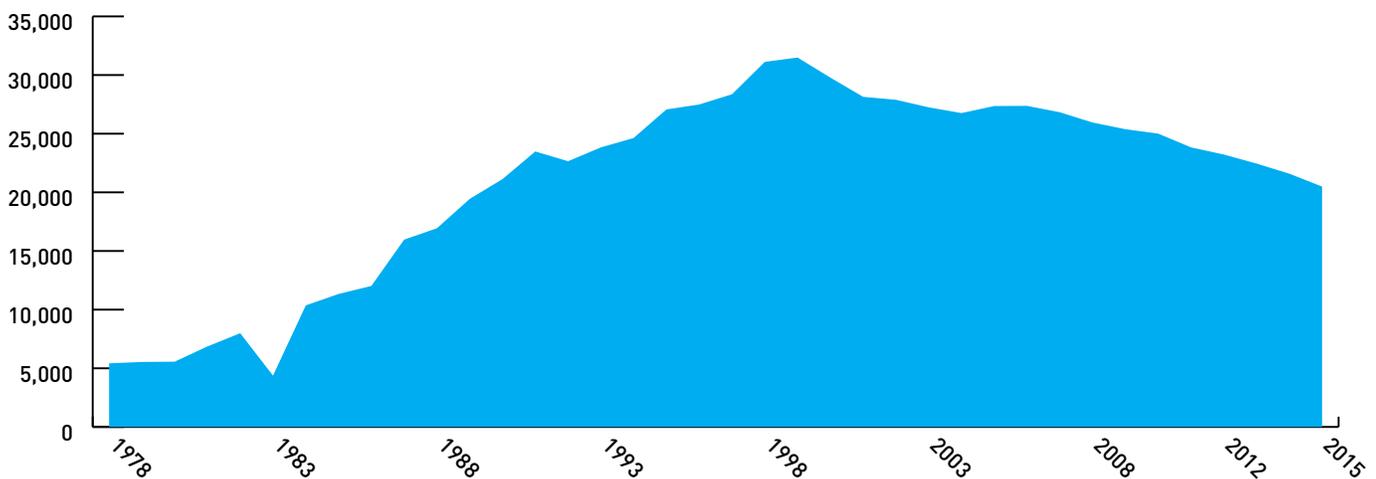
THE United States and New Jersey face a mass incarceration crisis. Between 1970 and 2010, the number of people incarcerated in the United States grew by 700 percent. As a result, the United States now incarcerates almost 25 percent of the world's prisoners while having only five percent of the world's population.

Although New Jersey has seen a recent decline in its incarcerated population, close to 35,000 people are still housed in its prisons and jails. In fact, despite the recent decline, the size of New Jersey's prison population increased by 278 percent between 1975 and 2015.

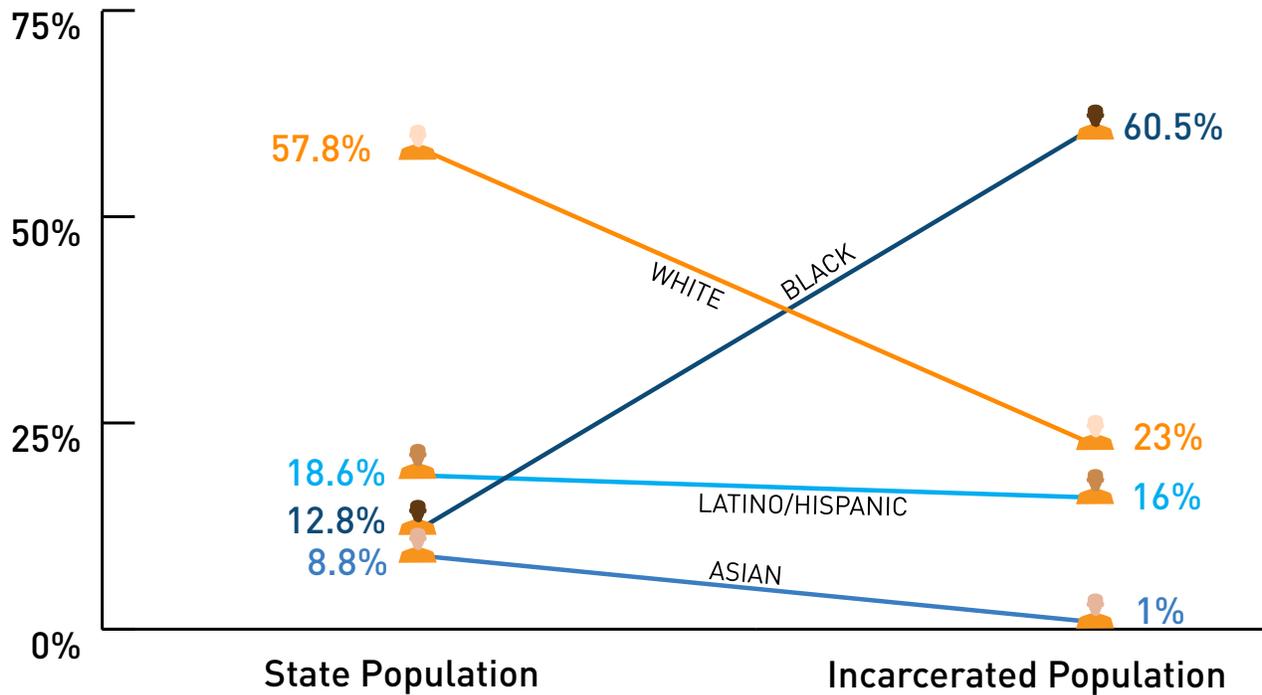


The sheer number and proportion of incarcerated people is a major problem. But New Jersey also suffers from other problems that plague the criminal justice system across the nation: the erosion of due process protections, deplorable conditions of confinement, and the overrepresentation of people of color in arrests and imprisonment.

NJ Prison Population, 1978–2015



Racial Disparities in Incarceration in New Jersey, 2014



Source: The Sentencing Project

People of color disproportionately face the brunt of mass incarceration. Nationally, Black people make up only about 13 percent of the population but comprise about 40 percent of prisoners. In New Jersey, the racial disparities are even worse: about 60 percent of individuals incarcerated in New Jersey are Black, while the state's population was only about 15 percent Black in 2016. Although people of color make up only about 44 percent of New Jersey's population, approximately 76.5 percent of prisoners in New Jersey are people of color. The state's Black and Latino residents are incarcerated at rates 12.12 and 2.19 times higher, respectively, than that of white New Jerseyans, based on 2014 data from The Sentencing Project.

In 2010, New Jersey taxpayers paid \$54,865 per year for each person incarcerated in the state's 13 prisons, adding up to more than \$1.4 billion annually, according to the Vera Institute of Justice. Among all

states, New Jersey had the fourth-highest per-person cost of imprisonment. And this did not include the costs counties were bearing by keeping approximately 15,000 people statewide in jail each year.

Yet there is hope.

Following decades of punitive policies that have sent millions to prison and devastated communities in every state, a national reevaluation of the criminal justice system has taken root. A growing number of community, faith, and political leaders on the right and the left agree: the nation's addiction to mass incarceration must end.

We must seize this historic opportunity to address the unprecedented scope of the mass incarceration crisis. With this vision, the American Civil Liberties Union of New Jersey (ACLU-NJ) sets forth a plan to dramatically reduce New Jersey's incarcerated population.

As we advance policy proposals to curtail mass

incarceration, we emphatically state that we must not only reduce the number of people in our prisons and jails, but we must also confront and eliminate the shameful racial disproportionality that plagues our criminal justice system. New Jersey has fallen short in the area of racial disparities in the criminal justice system. While our state has achieved some success in reducing its prison population overall, data from The Sentencing Project indicates that the racial disparities among New Jersey’s prison population have grown to be the most severe in the country.

In the context of juvenile justice, New Jersey has been a leader at reducing the number of children who are detained. However, our state has also retained staggering racial disparities among incarcerated young people.

As a result of these racial disparities in the criminal justice system, people of color in New Jersey are disproportionately likely to experience what has been referred to as “civic death,” a systemic exclusion from democracy that can result from incarceration, including exclusion from housing, loss of employment, ineligibility for social programs, and even revocation of the fundamental right to vote. Families

and communities of color disproportionately experience the diminished social and economic prospects that result from the incarceration of loved ones.

We also must confront the reality that people with disabilities are overrepresented in our prisons and jails by large margins. The barriers and discrimination faced by people with disabilities in the criminal justice system often intersect with race and other aspects of identity. People with disabilities such as mental health diagnoses, intellectual disabilities, mobility challenges, HIV/AIDS infection, and vision impairment are incarcerated at rates far exceeding their proportion of the general population. We must ensure that as jail and prison populations decline, people with disabilities are not left behind.

The fiscal, social, and economic impacts of mass incarceration devastate the lives of individuals and weaken families and communities. The need for change is non-negotiable. The proposals in this document would furnish a fairer, smarter, and more effective criminal justice system. Locking a person in a cage should be an option of last resort, rather than a first response to complex societal problems, and that premise informs every aspect of this report.

The ACLU-NJ’s vision relies on several proposals. Some will have a direct, measurable effect on the incarcerated population; others will be impossible to quantify. This document is not the result of a study or rigorous academic analysis. It does not purport to stand up to rigorous academic analysis. The ACLU-NJ candidly acknowledges that gains in one area will mitigate progress in others. For example, if fewer people are jailed as a result of bail reform or the decriminalization of drug possession, there will be fewer people able to benefit from improvements in the parole release system. Where numbers are provided they represent optimistic estimations – or reasoned aspirations – rather than exact predictions. Where possible, projections are based on academic studies and documented effects of reforms on prison populations in New Jersey and in other states.

VISION TO CUT MASS INCARCERATION IN NEW JERSEY

The ACLU of New Jersey's Path to Dramatically Cut Our State's Prison and Jail Population

A multitude of root causes created mass incarceration, and only a multi-pronged approach can address it. In 2015, there were 36,486 in New Jersey's prisons and jails. The ACLU of New Jersey has a vision to cut that number significantly.



Reducing the Number of People Entering Prisons and Jails

	ESTIMATED POTENTIAL REDUCTION
End Reliance on Pretrial Detention	8,500
Eliminate Mandatory Minimums	3,300
Convince Judges to Consider the Costs	2,000
Reduce Unnecessary Police Encounters:	
<i>Stop Arrests for Drug Possession</i>	
<i>Decriminalize Sex Work</i>	
<i>Legalize Marijuana</i>	
<i>End Criminal Punishment of Lowest-Level Offenses</i>	800
Increase the Minimum Wage	750



Rethinking Release

Fix the Parole System for State Prisons	1,400
Fix Parole for County Jails	400
Stop Imprisoning People for Technical Parole Violations	300
Compassionate Release	100
Expand Earned-Eligibility Credits	1,200
Expand Participation in Successful Re-entry Programs	100
Introduce More Robust Re-entry Programs	1,000
Establish Prisoner Cooperative Programs	200



Fixing the System

- Encourage Pretrial Intervention
- Reform the Parole Board's Composition
- End Warrants for First-Time Failures to Appear
- Reform Prosecutor's Offices to Stop Incentivizing Win-At-All-Costs Dynamic
- Pass Legislation Requiring Reinvestment of Criminal Justice Savings Into Affected Communities
- Build Transparency Into the System

Envisioned Estimated Total	19,750
Approximate Remaining Prisoners	16,750

FRONT-END REFORMS

Looking in Through the Prison Gates

REFORM of the criminal justice system is more than a moral imperative – it also reduces wasteful and unnecessary incarceration. The following changes would lower the population in our prisons and jails at the source: by limiting unnecessary interactions with the criminal justice system and by reducing the number of sentences that are inordinately severe.



End Reliance on Pretrial Detention

- New Jersey’s bail reform has already resulted in smaller numbers of people awaiting trial in jail unnecessarily.
- Bail reform must be implemented fairly.

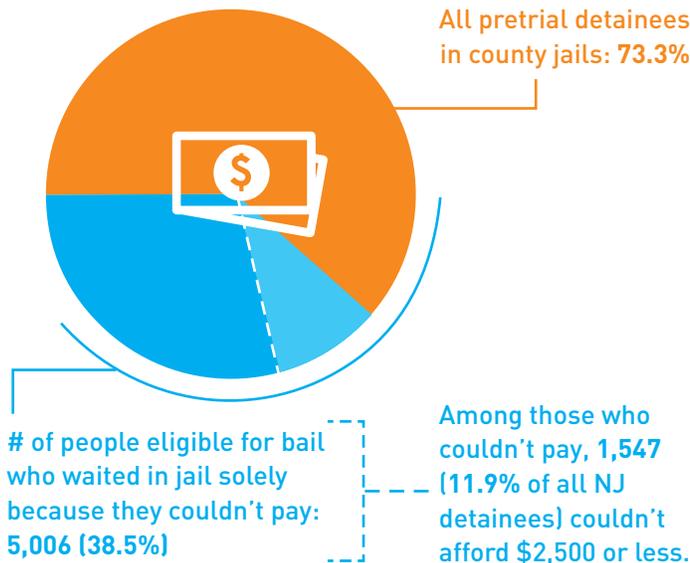
For years, New Jersey had a wealth-based bail system rather than a risk-based one. In 2017, that changed, and we are already beginning to see a reduction in our county jail populations.

Under the previous system, although judges were only supposed to consider the risk that a defendant would not appear in court in setting money bail, the setting of even small bail amounts for low-risk defendants kept poor people locked up, while wealthier defendants – including ones who posed a greater risk – were released.

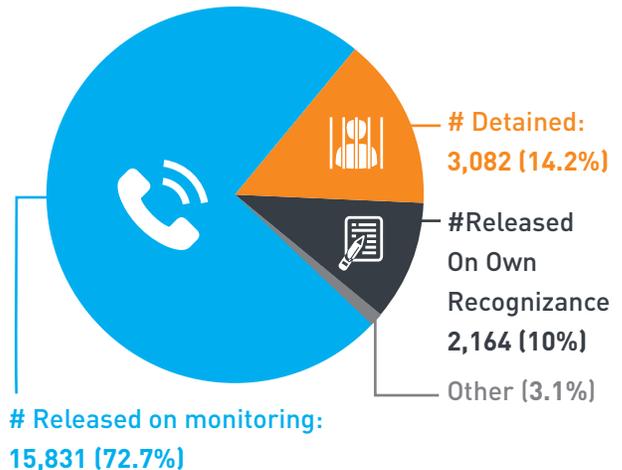
In 2014, New Jersey dealt a major blow to mass incarceration through legislation and a constitutional amendment that overhauled our state’s bail system and implemented meaningful speedy trial requirements. The bail reform law took effect in 2017, and

The Dramatic Results of New Jersey’s Bail Reform

**Pre-bail reform:
County jail pretrial detainees
unable to pay bail, 2012**



**Post-bail reform:
Pretrial population, January to
June 2017**



[Data collected from 19 of 21 county jails.] Source: Drug Policy Alliance.

the ACLU-NJ is currently working with allies to ensure it is implemented fairly and effectively.

Before reforms were enacted, nearly 11,000 people awaited their trials in New Jersey jails — people convicted of no crime but stuck behind bars because they couldn't afford bail. The average length of a pretrial detention was close to 11 months. On any given day, more than 1,500 people were in jail because they could not come up with \$2,500 or less in bail. This system of de facto debtors' prisons created vast disparities in the criminal justice system between rich and poor defendants.

In just the first eight months of the reforms, New Jersey has already seen significant positive changes: the number of people in jail awaiting trial has dropped from 7,173 at the beginning of 2017 to 6,006 on August 31, 2017 (and there were reductions even before January 1, in anticipation of the implementation of bail reform).

But, in order to continue to drive down the number of people unfairly jailed, bail reform must be implemented fairly. If we are able to ensure the following three conditions, New Jersey will see a tremendous reduction in its pretrial jail population:

- 95 percent of people charged with crimes other than the most serious ones are out of jail while awaiting trial. (Excluded from this group are those charged with the most serious offenses: violent offenses, weapons offenses, and sex offenses.)

- 30 percent of the people charged with the more serious offenses are released on supervised conditions while awaiting trial.
- Those who remain in jail spend up to 40 percent less time there than they used to, because of speedy-trial protections included in pretrial justice reform.

These changes could result in a reduction of as many as 8,500 people from our jail population.



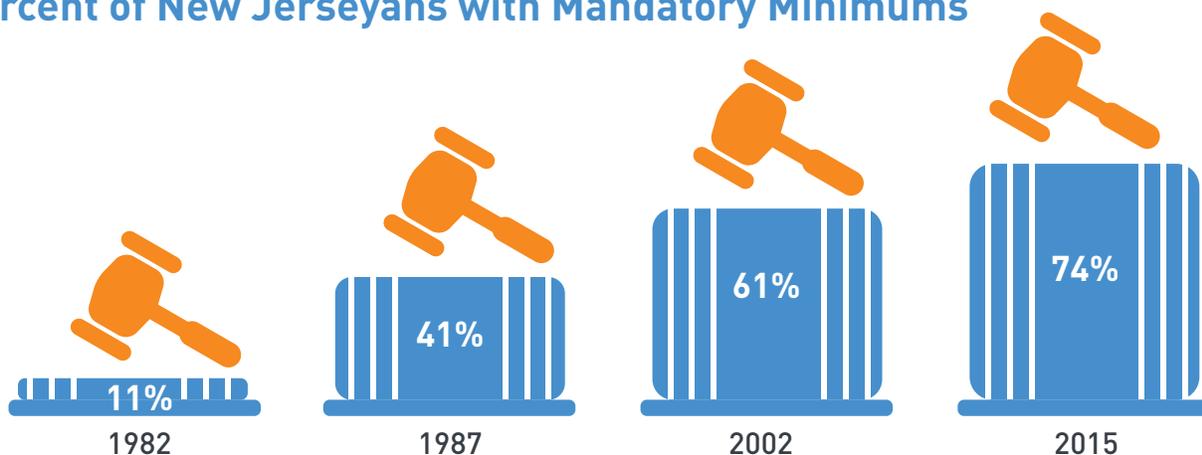
Eliminate Mandatory Minimum Sentences

- **Mandatory minimums hamstring judges into giving harsher sentences.**
- **Since their advent in the '70s, inflexible sentencing requirements have become extremely widespread.**

Mandatory minimum sentencing laws have played a major role in the growth of New Jersey's prison population over the last four decades. Since the mid-1970s, Congress and state legislatures have implemented strict, inflexible sentencing laws that have led to a dramatic, unfair spike in the length of prison terms.

In 1979, the New Jersey Legislature began to institute mandatory minimum sentences for certain crimes. Since then, judges have had no choice but to sentence individuals convicted of these crimes to prison for a minimum number of years. Those indi-

Percent of New Jerseyans with Mandatory Minimums



viduals by law have to serve the entire mandatory portion of their sentences before becoming eligible for parole.

The New Jersey Legislature has continually expanded the types of crimes that carry mandatory minimum sentences. In 1987, the Comprehensive Drug Reform Act created strict mandatory minimum sentences for drug offenses in our state and increased the number of prison admissions for drug convictions. For example, instead of receiving probation, as they often had in the past, people convicted of distributing small amounts of controlled substances now serve prison sentences frequently lasting three to five years.

More than 15,000 people are serving mandatory minimum sentences in New Jersey today, a giant leap from past decades. In 2015, 74 percent of people serving prison sentences had mandatory minimum terms. In contrast, only 44 percent of incarcerated people in 1987 served a mandatory minimum sentence. Even that rise represented a significant increase from 11 percent in 1982, when mandatory minimums generally were attached only to crimes of violence committed with firearms.

Ending mandatory minimum sentences would make a large dent in the prison population. Many of the people serving mandatory terms of five years or less are incarcerated for possession with intent to distribute drugs or for weapon possession. If half of this group no longer had mandatory minimums, they would be eligible for release sooner and New Jersey could decrease its prison population by 3,300 people.

However, even those without mandatory minimum sentences would not be automatically released. As discussed later in this document, New Jersey must also implement real reforms to the parole system to ensure that people serve prison sentences only for the period of time necessary to serve the purposes of punishment – traditionally justified through the rationales of incapacitation, deterrence, retribution, and rehabilitation. Incapacitation removes someone from society to prevent harm to others; deterrence

postulates that knowledge of consequences discourages criminal actions; retribution delivers “just deserts”; and rehabilitation posits that people can reform themselves to overcome criminal inclinations.



Ensure Judges Consider the Costs and Benefits of Sentencing

- For the many offenses where jail time or probation are possible, judges should consider the costs of incarceration and give probation rather than a prison sentence

Some convictions – such as murder convictions – invariably lead to prison, and understandably so. Other convictions – such as littering – appropriately almost never do. But thousands of convictions every year force judges to decide between sending defendants to prison and enlisting alternatives to incarceration, such as probation. Yet there is no consistency in the information judges rely on when making these critical decisions that could easily go either way.

The answer lies in facts.

If we arm judges with real information about the fiscal costs and recidivism rates associated with various alternatives to incarceration, some of those cases on the margins – cases that today result in prison sentences – would likely become probation cases. After all, only a rare judge would send someone to prison knowing that it will not only cost more, but *would do very little to reduce the likelihood of future criminality*. As with all proposed reforms – but particularly where courts evaluate data that purport to be objective – we must be especially vigilant to ensure that the reforms do not reinforce or exacerbate disparities that exist throughout our criminal justice system.

If one-third of people sentenced to prison for non-violent, non-weapon offenses like burglary, drug possession, or theft were instead given probation, about 2,000 fewer people could be jailed.

It is worth noting that if drug possession, loitering, and other low-level offenses described were

decriminalized, fewer nonviolent offenders would be eligible for prison sentences, thus reducing the impact of the recommendation imploring judges to consider the costs of sentencing.



Reduce Police Encounters Through Decriminalization of Low-Level Offenses and Drug Possession

- Law enforcement should not bear responsibility for community problems better handled outside the criminal justice system.

Ending Arrests for Low-Level Offenses

The aggressive enforcement of low-level offenses – the cornerstone of “broken windows” policing – inappropriately criminalizes tens of thousands of people in New Jersey every year. Enforcement of these offenses leads to unnecessary encounters between police and community members, compounded by aggressive stop-and-frisk practices and quota-based

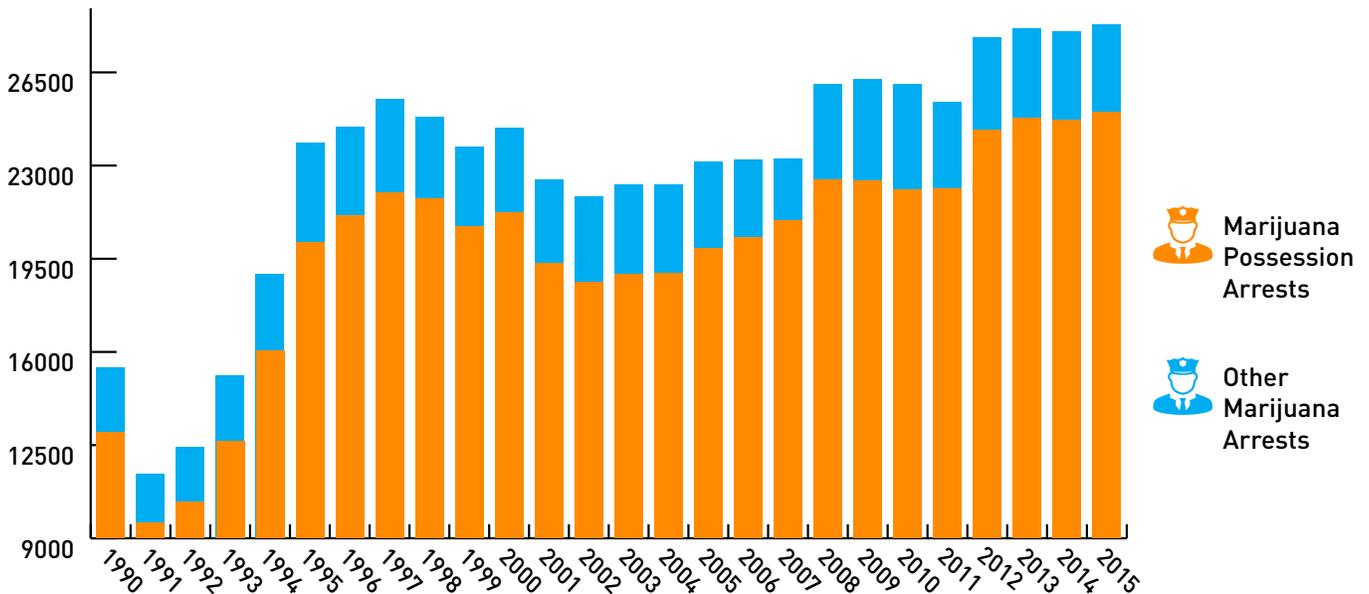
policing. These enforcement strategies needlessly entangle people in our criminal justice system, and they disproportionately target people of color.

These arrests lead to jail time and longer criminal records, ultimately translating into longer sentences – all for relatively small offenses that divert resources from enforcement of more serious crimes. In 2015, New Jersey law enforcement made 302,856 arrests. Only one in 10 was for a violent offense. Police should not bear sole responsibility for managing community problems. Some of these behaviors would be more effectively resolved through other agencies, such as the Department of Human Services.

New Jersey makes thousands of arrests each year for several kinds of low-level offenses, from disorderly conduct (12,988 in 2015) to loitering and curfew violations (1,416 in 2015) to prostitution (806 in 2015).

Chief among these low-level offenses is marijuana possession. Between 1990 and 2015, New Jersey law enforcement agencies made more than 470,000

Marijuana Arrests in NJ, 1990–2015



Marijuana arrests continue to rise. In 2015, New Jersey made the most marijuana possession arrests on record – with 2013 and 2014 coming in second and third, respectively.

small-scale marijuana possession arrests. In 2015, that number reached 24,985, the largest amount for any year on record in New Jersey, according to the state's Uniform Crime Report.

Treating Drug Abuse as a Health Issue, Not a Criminal Offense

Black New Jerseyans are arrested for marijuana possession at a rate about three times higher than whites, despite studies that show that Black and white individuals use marijuana at similar rates.

For the vast majority of people who use marijuana currently, the greatest harm is not health-related. Rather, the criminal and civil sanctions resulting from a marijuana arrest impose life-altering barriers to employment, housing, and an education. The consequences of an arrest for possession of even a small amount of marijuana can include up to six months in jail, loss of a job and driver's license, and more than \$1,000 in fees and fines.

The issue extends past marijuana. New Jersey law enforcement made 19,231 non-marijuana-related drug possession arrests in 2014. Drug possession arrests make up about one out of every seven arrests in New Jersey. While people rarely spend long periods of time in prison for marijuana possession or other low-level offenses, as some people are released within hours, those arrested in connection with possession of other drugs may remain in custody for days, weeks, and even months.

The war on drugs in New Jersey and throughout the country has been a dismal, expensive failure. Criminal prohibition drives up violence and harms public health, and enforcement has unnecessarily entangled an unprecedented number of people in the criminal justice system.

New Jersey should decriminalize all drug possession and instead treat the problematic use of drugs as a public health concern, not a law enforcement priority.

If we assume that the average person arrested for a low-level offense sits in jail for 48 hours, then we can estimate a reduction in our state's jail population by 333 people if New Jersey were to legalize

marijuana for adults and decriminalize disorderly conduct, loitering, drug possession, and sex work. If combined with the 477 people currently in prison for drug possession, these reforms could lead to a total of 810 fewer people incarcerated.



Increase the Minimum Wage

- Higher wages are correlated with decreases in crime.
- Lack of economic opportunity can be a motivation for criminal behavior.

Among the recommendations the White House Council of Economic Advisers issued in 2016 for reducing the nation's incarcerated population, one stood out in particular: increasing wages. According to the White House Council: "Crime and poverty are correlated and criminal behavior is often motivated by a lack of economic opportunity. ... Studies have found that wage increases significantly decrease crime."

According to the White House report, a 10 percent increase in wages for non-college educated men could result in a 10 to 20 percent reduction in crime rates, in particular for property and violent crimes.

In New Jersey in 2014, people reported 23,004 violent crimes and 155,062 property crimes. Males accounted for 80 percent of violent crime arrests and 66 percent of property crime arrests. Given that 62 percent of men in New Jersey lack a bachelor's degree, an increase in the minimum wage of 10 percent or more could result in 7,486 fewer violent and property crimes per year under the White House's 10 percent reduction estimate. Assuming that 10 percent of those crimes would have resulted in people serving time, New Jersey could see a reduction of around 750 people from its incarcerated population.

It is important to note that if judges' consideration of the costs of sentencing led to fewer people incarcerated for property crimes, as recom-

mended in this document, the baseline number for the 10 percent reduction in incarceration as the result of a minimum wage increase would decrease. Nonetheless, increases in the minimum wage could meaningfully decrease the size of the incarcerated population while improving the lives of the many New Jerseyans earning the minimum wage, currently \$8.44 per hour. Suffice it to say that in New Jersey, where the cost of living is so high, a ten percent increase in the minimum wage does not provide a living wage. We have called on New Jersey to raise the minimum wage to \$15, an amount that begins to approach a living wage.

BACK-END REFORMS

Eyeing Smarter Exits

ALLOWING incarcerated people to transition out of confinement and re-enter society is essential to shrinking the current incarcerated population. Our sentencing policies often mandate extremely harsh prison sentences disproportionate to the crime committed, which more deeply entrenches people in the criminal justice system. Even with recent improvements, many people imprisoned in New Jersey lack the support or education to succeed when back in society. Fixing these deficiencies would lead to a system that stops people from spending more time incarcerated than they need, and it would better equip people, post-incarceration, to lead lives that do not enmesh them in the criminal justice system again.



Fix the Parole Release System

- Parole is granted at a significantly lower rate compared to previous decades.
- The parole board denies parole groundlessly and without any requirement to give an explanation.
- Parole can be too easily revoked for small, non-criminal violations of parole.

Parole is a process that enables people to be released from prison before the end of their sentence. The state's sharp decline in the use of parole has contributed to mass incarceration in New Jersey. Accordingly, parole is an important part of reforming our corrections system.

Parole allows people to safely reintegrate into society and connect with resources that help them develop the skills needed to secure education, employment, and housing. Once released, parolees can reenter the workforce, reconnect with their families,

and seek support from their own communities.

Parole boards that groundlessly deny parole violate constitutional guarantees of due process and equal protection. The pervasive racial disparities in the criminal justice system also mean that denials of parole disproportionately affect families and communities of color.

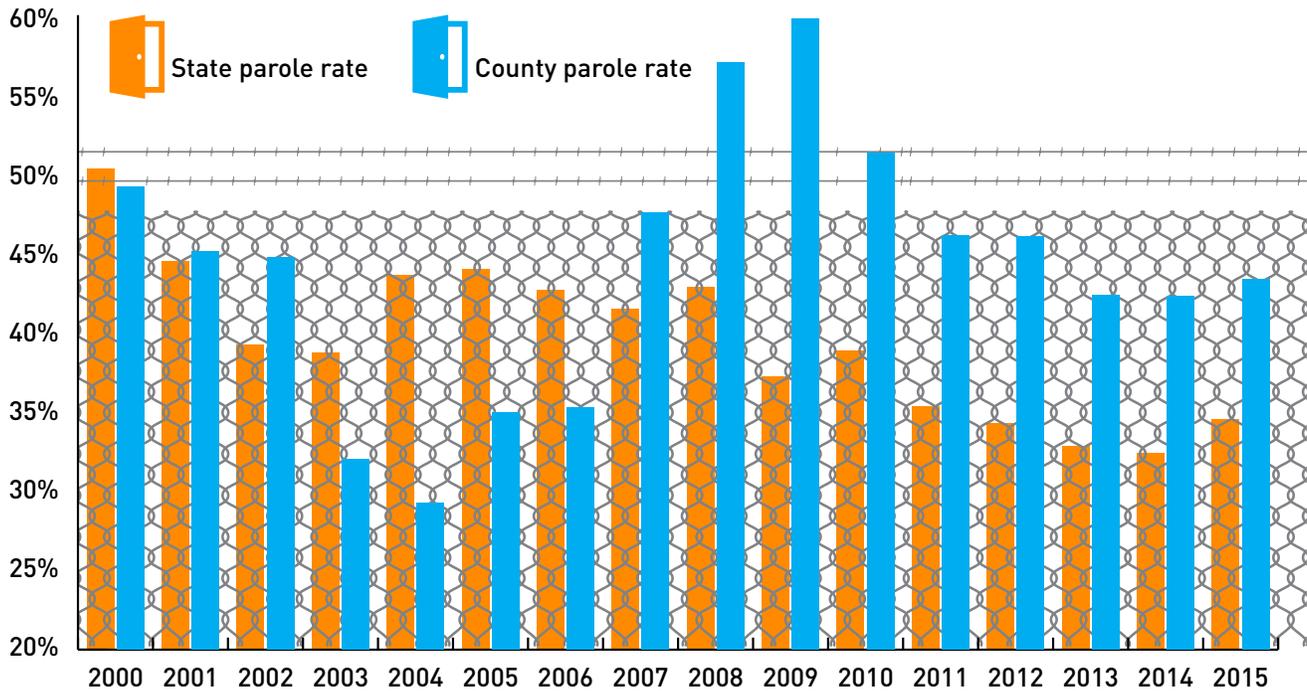
The number of times parole has been granted has declined sharply and steadily. Between 2002 and 2008, an average of 7,747 people were released from prison on parole every year. In 2015, only 3,011 people were paroled. Several factors are at play, including a decrease in the number of people eligible for parole. Still, the parole rate in 2015, 34.4 percent, is significantly lower than the rate just a decade and a half earlier, at 49.8 percent in 2000. If New Jersey returns to the 2000-era parole rate, about 1,350 fewer people could be incarcerated.

The same severe trend exists in county jails. The State Parole Board decides which people in the states' county jails sentenced to terms of less than 365 days should be released on parole. At the peak in 2009, people in county jails were paroled at a rate of 59.1 percent. Today that rate is only 43 percent. A return to the earlier rate could mean about 450 fewer incarcerated people in New Jersey.

Once out on parole, people who violate their parole can be returned to jail. Violations take two forms: an arrest for a new offense or a violation of a parole condition that is not itself criminal, such as being late for a meeting, failing to keep a job, or missing curfew. The latter type of violation is known as a "technical" violation of parole.

In 2003, 70 percent of all parole-revocation hearings resulted in revocation. Today, 85 percent do. If we return to the 2003 rate, about 325 fewer people

Parole Rates in NJ, 2000–2015



could be incarcerated. Returning someone to jail based on a technical violation of parole, such as missing a meeting or doctor’s appointment, is a poor use of resources and can stymie individuals’ efforts to rebuild their lives after incarceration. This is especially true for people with disabilities who may need – and are often not receiving – reasonable modifications to successfully comply with conditions of their parole.

Finally, denying the release of elderly people who are no longer considered dangerous defies public safety, financial sense, and compassion for seniors and their families. Older people pose fewer disciplinary problems during their incarceration and re-offend at lower rates upon release. The significant medical needs of elderly individuals make them an extraordinarily costly group to house, and prisons and jails are simply not equipped to handle the complexities involved in caring for aging adults.

New Jersey already allows for compassionate release, also called medical parole, but few elderly

adults are released early. Expanding this program to include early release for elderly individuals who can demonstrate that they pose little risk would save money and help families. If 30 percent of incarcerated senior citizens were released, there could be about 125 fewer people in our prisons.

This report notes that if reforms discussed earlier – reducing the number of people who are serving sentences in jails and prisons by raising the minimum wage, decriminalizing low-level offenses, and ensuring that judges consider the costs of sentencing – were put in place, the overall number of people incarcerated would decline, thus reducing the impact of projections for this section concerning parole.



Expand Earned Eligibility for Good-Time and Merit-Time Programs

- Other states have more generous and sensible policies for commuting time from a sentence.

While release on parole is generally discretionary, other mechanisms for release are either automatic or earned by satisfying certain specific conditions, such as obtaining a degree or attending substance abuse counseling. In New Jersey, people in prison earn commutation credits for good behavior. While the allotment varies based on the amount of time a person has served, the average number of days taken off a sentence annually is 103. New Jersey also offers credit for participation in programs, but because those programs are oversubscribed, the credits are difficult to earn and even harder to anticipate.

Other states provide such credits far more generously and sensibly. Seven states offer day-for-day credit – or more – for some categories of incarcerated people. For each day a person serves, the sentence becomes one day shorter. In Alabama, Illinois, Louisiana, Oklahoma, Texas, and West Virginia, people in prison not serving mandatory minimum sentences can cut their sentences in half through these credit programs. North Carolina offers the same credits for those serving sentences for DWI offenses.

If New Jersey were as generous with good-time incentive credits as other states, our prison population could be reduced by about 1,150 people.

If New Jersey provided more good-time credit, coupled with incentive credits, the reduction would be even greater and re-arrest rates would likely shrink as a result.



Expand Successful Re-entry Programs

- **Having stability after a prison sentence reduces the possibility of a future arrest.**
- **Successful re-entry begins even before release from prison.**

Having effective re-entry programs available for all, including people with disabilities, is essential to stopping the revolving door of the criminal justice system. Re-entry programs provide services that help people secure an education, employment,

housing, treatment for substance abuse, and mental health services. These programs allow formerly incarcerated people to more easily meet needs that, when unfulfilled, are often directly linked to causes of reoffending.

In 2015, community re-entry partners served more than 30 percent of the 10,448 people released from prison that year. Research suggests that specific elements of re-entry programs are directly linked to decreases in rates of recidivism. For example, in Massachusetts, people who complete therapy after their release are 11 percent less likely to be re-arrested within one year than those who do not.

New Jersey should invest in re-entry programs that demonstrate reduced recidivism rates and expand access to these programs. If all incarcerated people who currently receive re-entry services received therapy, New Jersey could potentially decrease the incarcerated population by about 75 people.

Re-entry programs that begin providing comprehensive services to people while they are still incarcerated have shown promising results for reducing recidivism, and New Jersey has started to provide such programs.

In Pennsylvania, program participation by men and women categorized as being medium- to high-risk led to only a 10 percent likelihood of recidivism, compared to a 34 percent likelihood for those in a control group. That program included transition planning, educational programs, employment placement, substance abuse prevention, counseling for incarcerated people's families, and 12 months of post-incarceration support. If New Jersey refined its re-entry program to include these components, also providing services to 30 percent of incarcerated people, the size of the state's total incarcerated population could shrink by about 1,000 people.

Prisoner-based cooperatives – programs that allow people in confinement to collectively sell crafts and other goods, affording them opportunities to both master a craft and earn income – are emerging as one viable way for people to start building economic stability prior to release from prison. These coop-

eratives offer the prospect of much-needed skills for future employment and help ease the financial burdens of fines and restitution often associated with incarceration. Cooperatives in Italy and the United Kingdom have seen recidivism rates as low as 5 percent and 2 percent, respectively. If New Jersey implemented cooperatives at each of its 13 corrections facilities to facilitate re-entry, with just 100 participants at each facility, New Jersey could potentially decrease its incarcerated population by up to 225 people.

SUMMARY OF FRONT-END AND BACK-END REFORMS

Envisioning a Fairer System, Inside and Out

IF fully realized, these eight steps could account for up to 19,750 fewer incarcerated people in New Jersey.

The system of mass incarceration comprises interrelated elements, which means some reforms would affect the reach of others. But while the system is interrelated, it is also vast. Though some issues would overlap, many elements of this plan are distinct from each other and would not be affected by other reforms.

For example, the bail reform number includes only defendants who would not be in jail pending trial, making it completely independent from a reform like the elimination of mandatory minimums,

which applies exclusively to people who are convicted of a crime.

For another example, the recommendation that judges consider the costs of sentencing pertains only to nonviolent offenses, while the recommendation to raise the minimum wage would also relate to decreases in violent crime.

While we cannot control for the possibility that one reform may prevent someone's incarceration altogether, the breadth of the proposals would give each reform its own independent impact. Each step in its own right is an important component of system-wide reform.

SUPPORTING REFORMS

Bringing Systemic Changes Within Sight

THE eight main reforms in this plan, if implemented, could significantly reduce the number of New Jerseyans in prisons and jails. Rather than a prescriptive policy proposal, this vision for ending mass incarceration is a far-reaching sketch of what a fairer criminal justice system could look like.

Alongside those eight proposals, other key reforms could result in meaningful reductions, although they defy similar kinds of quantification. When approaching criminal justice reform, it is important to acknowledge all of the moving parts of the system and the ways that each part contributes to the over-incarceration of New Jersey's residents.



Pretrial Intervention

- **Pretrial intervention lets people charged with low-level offenses avoid prison. We need more.**

In 2016 in New Jersey, 9,998 people, mostly first-time offenders charged with third- and fourth-degree offenses, applied to the Pretrial Intervention program (PTI). In this program, people charged with lower-level offenses can avoid incarceration and ultimately have their records expunged if they comply with conditions set by the court.

Of those PTI applicants, 5,314 were accepted into the program. While those who were not accepted likely received probation rather than a prison sentence, they were nonetheless under correctional supervision and saddled with a criminal record.

Because the collateral consequences of a criminal conviction alone can hinder efforts to find a job or place to live, people diverted into PTI are often better positioned to succeed. Creating mechanisms for more admissions to PTI may not have an immediate, direct impact on the number of people incarcerated

in New Jersey, but it would make the criminal justice system smarter and fairer.



Parole Board Composition Reform

- **The parole board needs accountability and members with expertise and experience in criminal justice.**

New Jersey's parole board consists of a chairman, 14 associate members, and three alternates, all appointed by the governor with the advice and consent of the Senate for terms of six years. For their full-time service on the parole board, they earn more than \$115,000 per year. The members are supposed to be qualified, with training or experience in law, sociology, criminal justice, juvenile justice, or similar fields that would give special insight into the justice system. Yet we know that not all nominees for the board have uniformly met that broad standard.

Advocates harbor concerns that when it comes to nominations, politics outweigh experience. As the Asbury Park Press editorial board has described it, the parole board has a reputation as "a longtime dumping ground for political hacks." In one notorious case, a local official who lacked both a college degree and any significant experience in criminal justice was nominated twice.

As described earlier, the rate of people released on parole has declined drastically over the past several years. While the reasons vary, it is critical that parole board members have sufficient and diverse experience with the criminal justice system and that political influence is minimized. Knowing that we cannot fully insulate parole board members from political influence, we recommend the parole board statute be amended to require at least the following:

1. Members have at least a bachelor's degree and 10 years of substantive professional experience in the specified fields.
2. Geographic diversity among the members, such as based on congressional districts.
3. No more than half of appointees come from one political party.
4. The release of a nominee's qualifications to the public.
5. Training on the diversity of New Jersey's communities, including training on race, ethnicity, disability, religion, sex, sexual orientation, gender identity, and income.



No Warrants for First-Time Failures to Appear

- Excessive over-policing creates a harmful cycle of low-level arrests and fines that can be difficult to escape.

As Justice Sonia Sotomayor recognized in a 2016 dissent regarding unlawful searches, “Outstanding warrants are surprisingly common.” Investigations carried out by the United States Department of Justice, among other researchers, have uncovered a vicious cycle: excessive policing results in more warrants, and the profusion of outstanding warrants incentivizes overly aggressive policing.

In Ferguson, Missouri, for example, 16,000 out of 21,000 residents had outstanding warrants against them. Moreover, many of these warrants are for low-level offenses. In a one-year period covering 2009 and 2010 in New Orleans, about 20,000 of the approximately 60,000 total arrests were made for traffic or misdemeanor warrants. That type of excessive police activity for warrants disproportionately affects communities of color. Although only 67 percent of Ferguson residents were Black, 92 percent of warrants were issued in cases involving Black defendants.

Only limited information is available on this subject in New Jersey, but the data that does exist suggests that New Jersey courts issue excessive warrants for

low-level offenses. During the 2013 “Fugitive Safe Surrender” program, more than 13,000 people in New Jersey came forward with outstanding warrants. In New Jersey, warrants are regularly issued for traffic violations and misdemeanors. If under the law officers had to issue a summons rather than making an arrest when they encounter someone with an outstanding warrant for a first-time failure to appear, New Jersey would have a fairer warrant system and a smaller jail population.



Prosecutorial Reform

- Prosecutors should have incentives to reduce mass incarceration.
- Civil asset forfeiture rewards aggressive over-policing and subsequently unnecessary prosecutions.

Prosecutors exercise discretion in ways that directly affect the number of people in jails and prisons. New Jersey must create incentives for prosecutors to reduce that number. We need mechanisms that encourage prosecutors to approach public safety holistically, and we need to reduce incentives that reward prosecutors for securing harsh sentences regardless of the circumstances of an individual defendant's case.

The criminal justice system can look to changes in health care delivery as a model for altering some of the patterns among prosecutors that have contributed to mass incarceration. With health care reform, the government created incentives for health care providers whose patients had fewer hospital stays and healthier outcomes. The Legislature could put in place incentives in that spirit to ensure that prosecutors' offices meet targets for reducing re-arrest and recidivism.

For another strategy, New Jersey should end the current practice of funding law enforcement through the proceeds of civil asset forfeiture, a widespread phenomenon that produces harmful and perverse incentives for over-policing. Finally, prosecutors

should be required to screen cases to assess the merits and strength of the evidence prior to charging decisions in certain cases, if not all.

To further improve prosecutorial practices, the Office of the Attorney General should create civilian task forces to oversee prosecutors' offices and develop written policies mandating training, supervision, and discipline to prevent prosecutorial error. When appointing prosecutors, the governor should consider a person's commitment to ending mass incarceration. More reporting of prosecutorial misconduct would also improve practices. All instances of prosecutorial error should be reported to the Office of the Attorney General, and district ethics boards should be notified when errors contribute to reversals, result in mistrials, or significantly prejudice defendants.



Legislation Requiring Reinvestment of Criminal Justice Cost Savings

- **Addressing the harms of mass incarceration demands robust re-investment in the affected communities.**

Reductions in New Jersey's incarcerated population come with significant cost savings. However, criminal justice reform is not free. These cost savings represent a remarkable opportunity for reinvestment in the criminal justice system to implement reforms and improve conditions and services. These cost savings also present a critical opportunity for investment in the many communities across New Jersey that have been devastated by decades of mass incarceration.

In 2012, Pennsylvania passed a law requiring a portion of the cost savings that resulted from criminal justice reform to be reinvested into building a smarter, more efficient, and more humane criminal justice system. Over a period of four years, Pennsylvania saw a decrease in its incarcerated population by 1,800 people, and more than \$13 million was earmarked to improve the criminal justice system.

These funds were used to improve the quality of services in prisons and re-entry programs, and they paid for technological improvements at the agencies that administer criminal justice across the state.

In New Jersey, the closure of Riverfront State Prison in 2009 saved the state an estimated \$40 million-plus per year. The closing of the Gloucester County Jail in 2013 saved that county over \$10 million. If New Jersey's lawmakers were to require the reinvestment of a portion of the cost savings from state- and county-level criminal justice reforms, many of the proposed reforms could be fully funded and implemented with no additional legislative appropriation. While reforms such as decriminalizing low-level offenses and instituting prosecutorial reform do not have direct costs of implementation, reforms such as the expansion and improvement of re-entry programs and the collection of more comprehensive and reliable criminal justice data can come with high costs.

Even modest requirements to reinvest cost savings from facility closures would provide significant resources to invest in the success of New Jersey's incarcerated and formerly incarcerated population.

TRANSPARENCY AND ACCOUNTABILITY

Letting Light Into Our Justice System

- **Transparency and data collection help us avoid mistakes similar to those responsible for mass incarceration.**
- **To end New Jersey’s racial disparities, we must first create an accurate snapshot using data.**

REQUIRING robust data collection and transparency is the easiest single step to ensure a fairer and more equitable criminal justice system. Standardized data collection will provide policymakers, advocates, researchers, and members of the public with the best depiction of the current state of affairs. It will also enable New Jersey to develop evidence-based reforms, rather than fear-based policies. Public access to criminal justice data is critical to ensuring that the government remains accountable to the public it serves.

The state of collection, maintenance, and public reporting in New Jersey regarding the criminal justice system is abysmal. Indeed, the greatest challenge in creating this report was the lack of data at each stage of the criminal justice process.

The Legislature should mandate uniform, standardized data collection and aggregation at all critical points in the criminal justice process, making that information available in an electronic format that outside researchers can manipulate. In identifying and developing collection and reporting systems, the Legislature should create task forces that include relevant criminal justice policymakers and administrators, researchers and academics, advocates, and, crucially, individuals who have experienced arrest, incarceration, parole, probation, and re-entry services. At a minimum, we recommend the following:

- Police departments must collect data on stops, searches, arrests, summonses, officers’ use of force, and internal affairs complaints and dispo-

sitions. Such data must be aggregated by date, location, race, ethnicity, gender, age, limited English proficiency, and the reasons for enforcement activity.

- Correctional facilities must collect aggregate data regarding incarcerated populations, including the average daily population, length of stay, total bookings, and net bookings, which excludes people who are booked and released. Net booking data should be aggregated by the reason for incarceration (e.g., indictable offenses, disorderly persons charges, traffic offenses, holds, and detainers), the stage of adjudication (e.g., pretrial, post-trial, hold, or detainer), and demographics (e.g., race, ethnicity, and gender).
- Correctional facilities must collect individual-level data regarding profiles of incarcerated people, including primary custody status (e.g., pretrial, post-trial, sentenced, or subject to a hold), charge status (e.g., indictable crime, disorderly persons offense, municipal ordinance violation, violation of probation, or parole violation), special charges, date of birth, ethnicity, education, residence, disability and health status, and release status.
- Correctional facilities must collect data regarding facility operations, including:
 - Use-of-force incidents, internal affairs complaints and dispositions, searches, and contraband found.
 - Activities provided, including types and number of participants.
 - Crimes and incidents within the facility, including the incident type, type of action taken, and any resulting disciplinary hearings.

- Breakdown of population by classification status (e.g., general population, administrative segregation, or protective custody).
- Grievances filed, documenting information such as type, finding, and resolution.
- Medical and mental health care provided, including the number of incarcerated people with chronic health or mental health problems, number of people sent to hospitals, and number of people who experienced mental health emergencies or were placed on suicide watch.
- Correctional facilities must collect data regarding personnel, including:
 - Personnel categories, such as correctional staff, medical staff, non-medical program services staff, social workers, or building maintenance.
 - Personnel demographics, including race, ethnicity, and gender.
 - Complaints filed against employees – by incarcerated people or other members of the staff – and investigations of disciplinary infractions, such as abuse, neglect, injury, theft, or harassment.
 - Leave information, including medical, family, suspension, or workers’ compensation, as well as duration.
- Courts must collect criminal justice data, including:
 - Demographic information, and in particular tracking the race and gender that correspond with defendants who are convicted, acquitted, or admitted to diversionary programs.
 - The basis for arrests and incarceration, the number of warrants executed for failure to pay debts and failure to appear in court, and the number of people incarcerated for each offense, including parole violations.
 - Sentence length.
 - Type of representation (e.g., private attorney, public defender, or pro se).
- Imposition of fines and fees and the disposition of collected money (e.g., restitution, money paid to dedicated funds, money paid to discretionary funds).
- The type of release granted. Further, judgments of both conviction and acquittal in criminal proceedings should explicitly capture a defendant’s race and gender.
- The parole board must collect data, aggregated by race and gender, regarding parole statistics for each offense, reflecting:
 - The number of hearings scheduled, and whether they were initial, two-member, three-member, full-board, or administrative reviews.
 - The number of hearings conducted, and whether they were initial, two-member, three-member, full-board, or administrative reviews.
 - The number of times parole was granted or denied.
 - Parole revocation statistics, including the number of hearings scheduled and conducted, as well as the number of hearings leading to parole revocations and parole continuations.
- Re-entry service providers must collect data regarding participant demographics, including:
 - Race, ethnicity, gender, age, limited English proficiency, length of sentence, and the charge that resulted in incarceration.
 - Participant success numbers, including employment rates and educational attainment.
 - Information about participant lapses, including arrests, convictions, and re-incarceration.
- New Jersey must mandate standardized online reporting requirements to ensure that the public has easy access to basic transparency data without having to file costly and often-demanding records requests.

CONCLUSION

What Criminal Justice Reform Could Look Like

WHILE it is impossible to predict with complete precision the number of people who would be diverted from the criminal justice system by some of these reforms, these changes would contribute to reducing the number of people who are incarcerated. As a case in point, New Jersey's monumental bail reform law has already made a dramatic impact in reducing mass incarceration. Moreover, these reforms are essential to making the system smarter and fairer.

The fact that the land of the free is also the home of the world's largest imprisoned population has become common knowledge. In one of the most politically fractured eras in American history, reduction of mass incarceration is the rare issue that enjoys bipartisan support.

The sheer scale of injustice in our legal system makes it difficult to see beyond the truism that the current system is untenable and must be replaced. An urgent question remains: once a broken justice system comes down, what appears in its place?

Without reinvestment in communities devastated by mass arrest, prosecution, and incarceration, any plan to reform the justice system is fated to perpetuate the same cruelties, racial disparities, and failures.

This proposal amounts to far more than the sum of its parts. It represents a shift in the power we allow our government to exert over our neighbors and fellow New Jerseyans. It puts forward the notion that people of color, and people in poor communities,

should not have to brace themselves in fear of the increased odds that they will be criminalized – not because of their actions, but because they are the ones whose communities are imperiled by aggressive policing. They are the ones who suffer when prosecutors operate on the motivation to convict at all costs. They are the ones whose families grieve because of unjust sentencing schemes and illusory opportunities for parole.

In places that have decreased mass incarceration, crime rates have not risen. Indeed, they have dropped. In New York, California, and here in New Jersey, the incarcerated population decreased about 25 percent between 1999 and 2012. All three states saw a decrease in crime rates that exceeded the average drop nationally, according to The Sentencing Project.

This vision establishes a start – but just a start – to clearing the fallout of a criminal justice system that, for as long as it has existed, has actively devalued people of color. There is no guarantee that these recommendations will succeed in reducing the number of people incarcerated or the gross racial disparities that plague our criminal justice system.

But we do have reason to believe that these reforms would lower the number of people behind bars in our state.

Regardless of the numbers, these changes would add more humanity to our gratuitously cruel penal system. To do nothing is to tolerate a rotten system, and that is unacceptable.

Acknowledgments

This vision has been a collaborative project, conceived of, written, researched, edited, and produced by present and former ACLU of New Jersey staff members including Portia Allen-Kyle, Edward Barocas, Iris Bromberg, Jasmine Crenshaw, Diane DuBrule, Dianna Houenou, Elyla Huertas, Tracey Kelley, Rebecca Livengood, Jeanne LoCicero, Andrea Long, Eric McKinley, Udi Ofer, Allison Peltzman, Keerthi Potluri, Alicia Rogers, Ari Rosmarin, Alexander Shalom, Amol Sinha, and Alexi Velez.

The data relied upon in this document comes from public sources including the State of New Jersey, the U.S. Census Bureau, the Bureau of Justice Statistics, the Drug Policy Alliance, and The Sentencing Project. More detailed notes are available upon request. Where possible, the projections are based on documented effects of criminal justice reform policies on prison populations and the criminal justice landscape before those policies were put in place, both in New Jersey and other states.

The ACLU-NJ is grateful for the ongoing support of the ACLU's Campaign for Smart Justice, the Fund for New Jersey, and other generous donors. Graphic design was executed by Kerstin Vogdes Diehn, KV Design.

Copyright © 2017 by the American Civil Liberties Union of New Jersey

ACLU

New Jersey

American Civil Liberties
Union of New Jersey
Post Office Box 32159
Newark, New Jersey 07102
973-642-2084
www.aclu-nj.org
info@aclu-nj.org