

PREENTRY REPORT

A Research Examination of Best Practices



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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



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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.

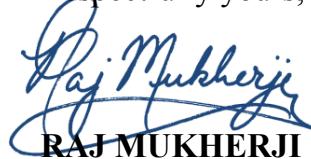
When our state eliminated cash bail in favor of a risk-based system several years ago, New Jersey took a measurable step forward in addressing deficiencies and needs of the pretrial system, which did not sufficiently ensure public safety given the system's inability to decide the need for pretrial incarceration 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.

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.

I. Introduction

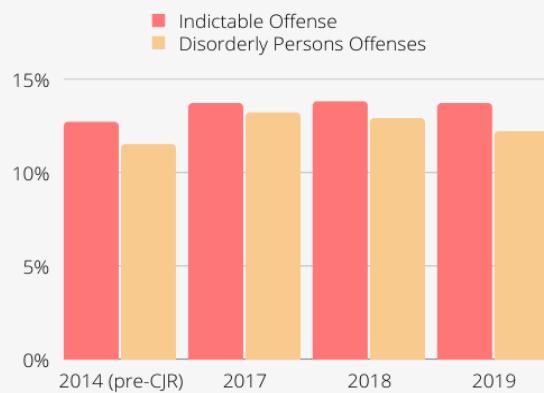
Improving pretrial justice practices and outcomes is a national priority with bipartisan support.¹ Whether the goal is to reduce unnecessary pretrial detention, minimize racial disparity, manage arrestees returning to communities, or increase pretrial success outcomes for defendants awaiting trial, there 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?

NEW CRIMINAL ACTIVITY IN NJ



2014

Before bail reform,
New Criminal Activity
(new indictable crimes
and new disorderly
persons offenses taken
together) was at 24.2%

24%

2017

After bail reform, New
Criminal Activity (new
indictable crimes and
new disorderly persons
offenses taken together)
was at 26.9%.

27%

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.

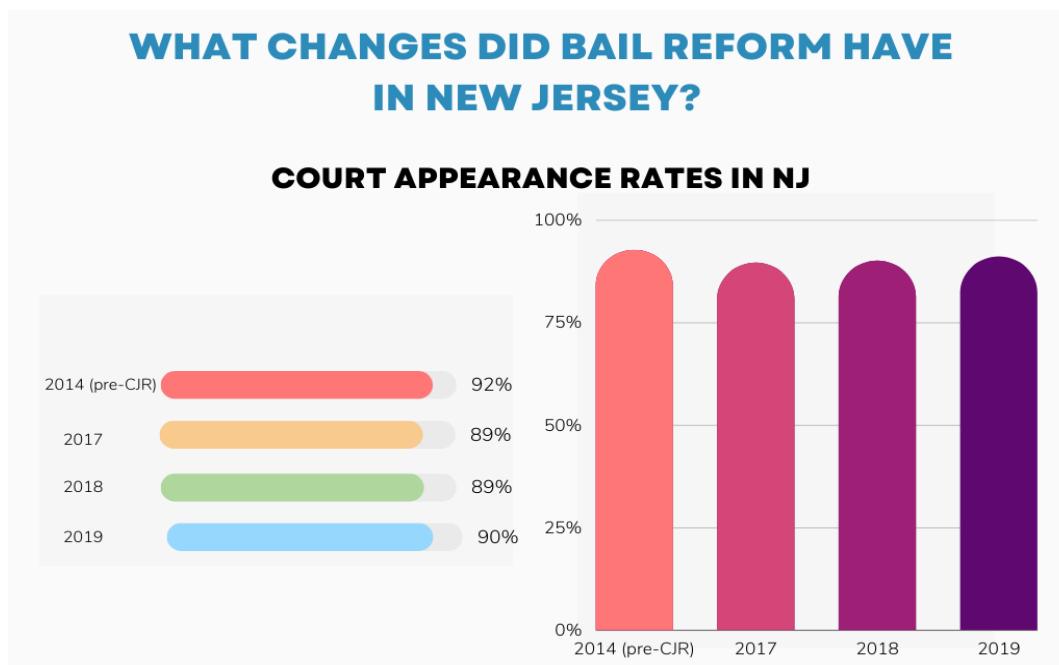
In 2017, New Jersey passed the Criminal Justice Reform Act (CJR). CJR was a transformative milestone for the state's criminal justice system because this bail reform initiative supplanted the monetary bail system. The monetary bail system resulted in the pretrial incarceration of many low-risk defendants 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

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.⁷ 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.



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.

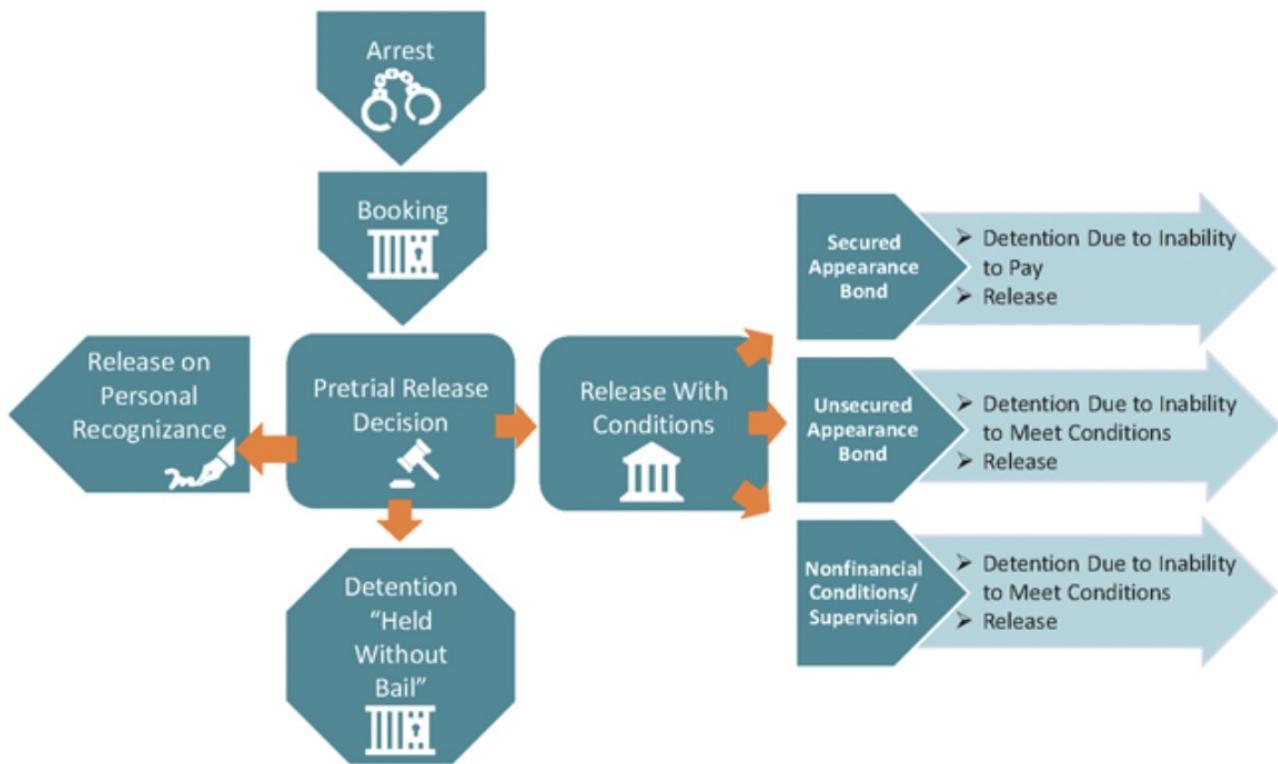
This analysis is meant to apply evenly to all defendants, regardless of the defendant's finances. These objectives are precisely what an effective bail system should aim to accomplish; since the implementation of CJR and under the guidance of the AOC, New Jersey's pretrial system has seen a significant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



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

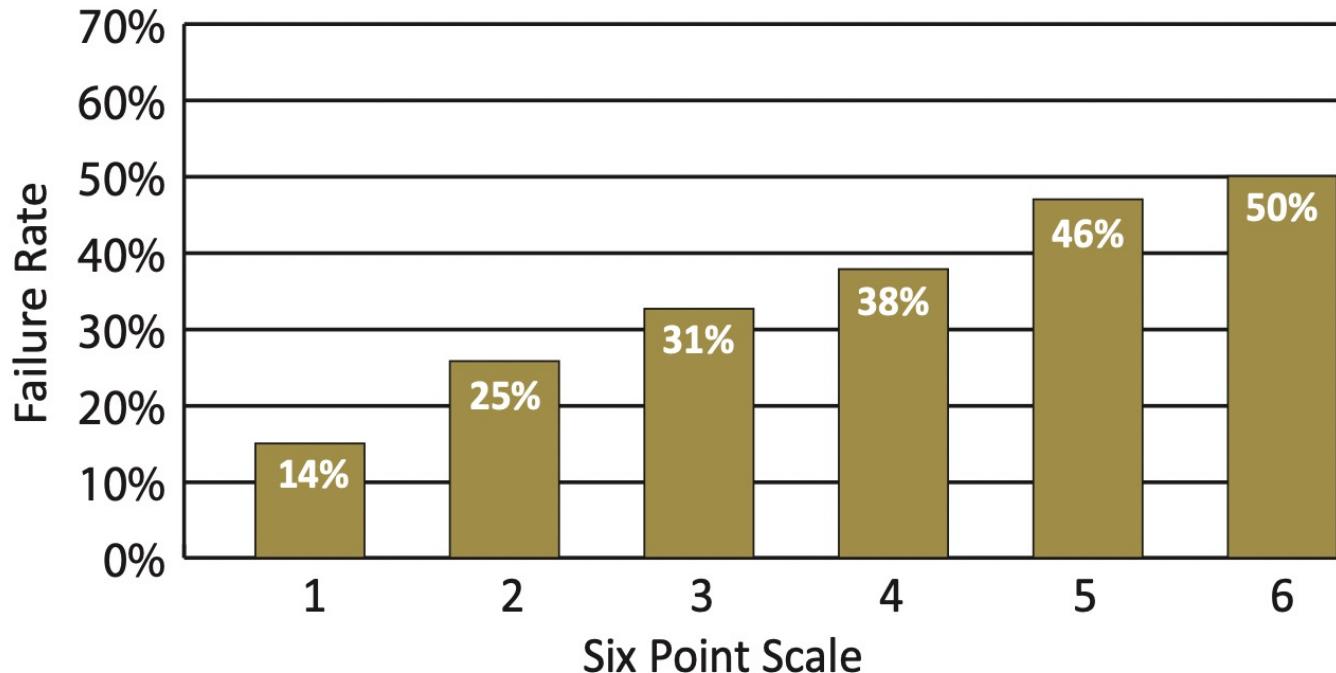
a risk of failing to appear in court when required or a risk of committing new criminal activity if released.²⁸ New Jersey adopted the Laura and John Arnold Foundation's pretrial risk assessment and designed a Decision-Making Framework to inform the court's pretrial release decision.²⁹ Pretrial Services 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



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

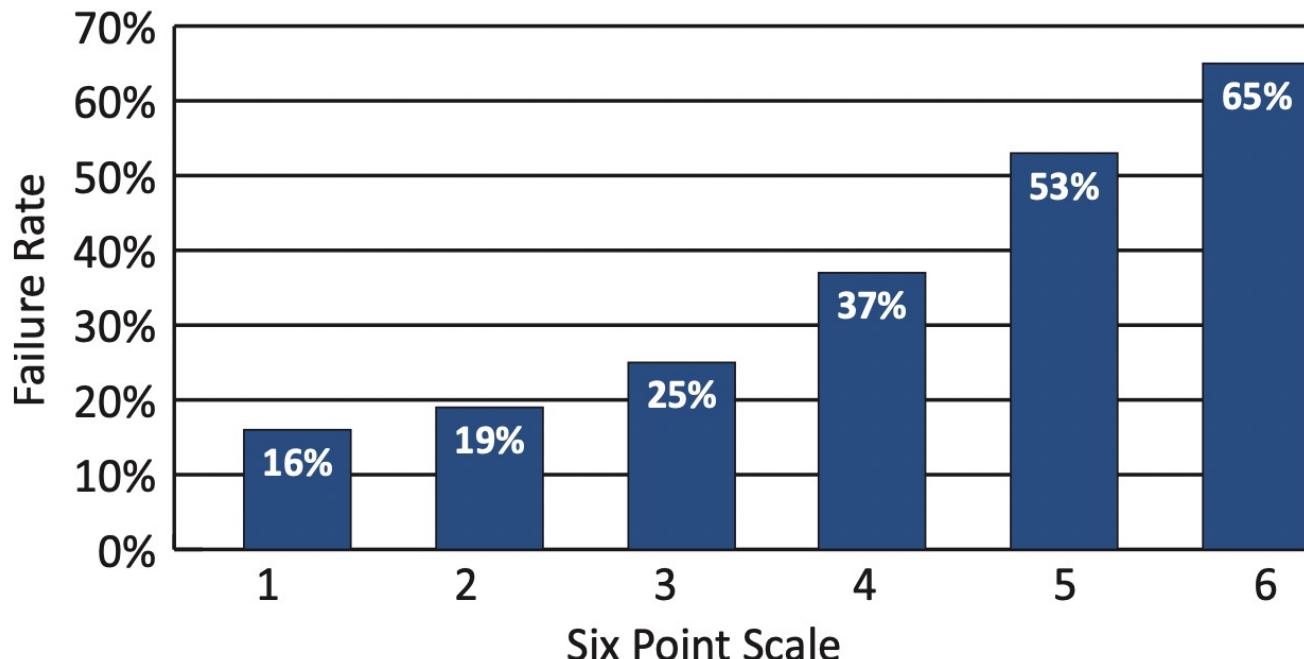
shown in the chart above. A defendant who scores a one has, statistically, a 16% chance of failing to appear for his or her court date. A score of two corresponds to a failure to appear rate of 19%; a score of three yields a 25% failure rate; four reflects a 37% failure rate; a defendant with a score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



(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

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

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:

- 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

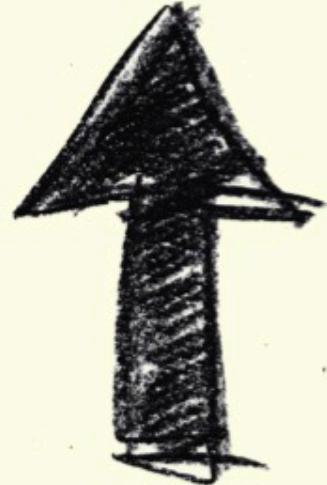
Interviews defendants to obtain background information such as family/community ties, employment, education, finances, physical and mental health, and alcohol or drug abuse. Conducts criminal history and court record checks.

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.

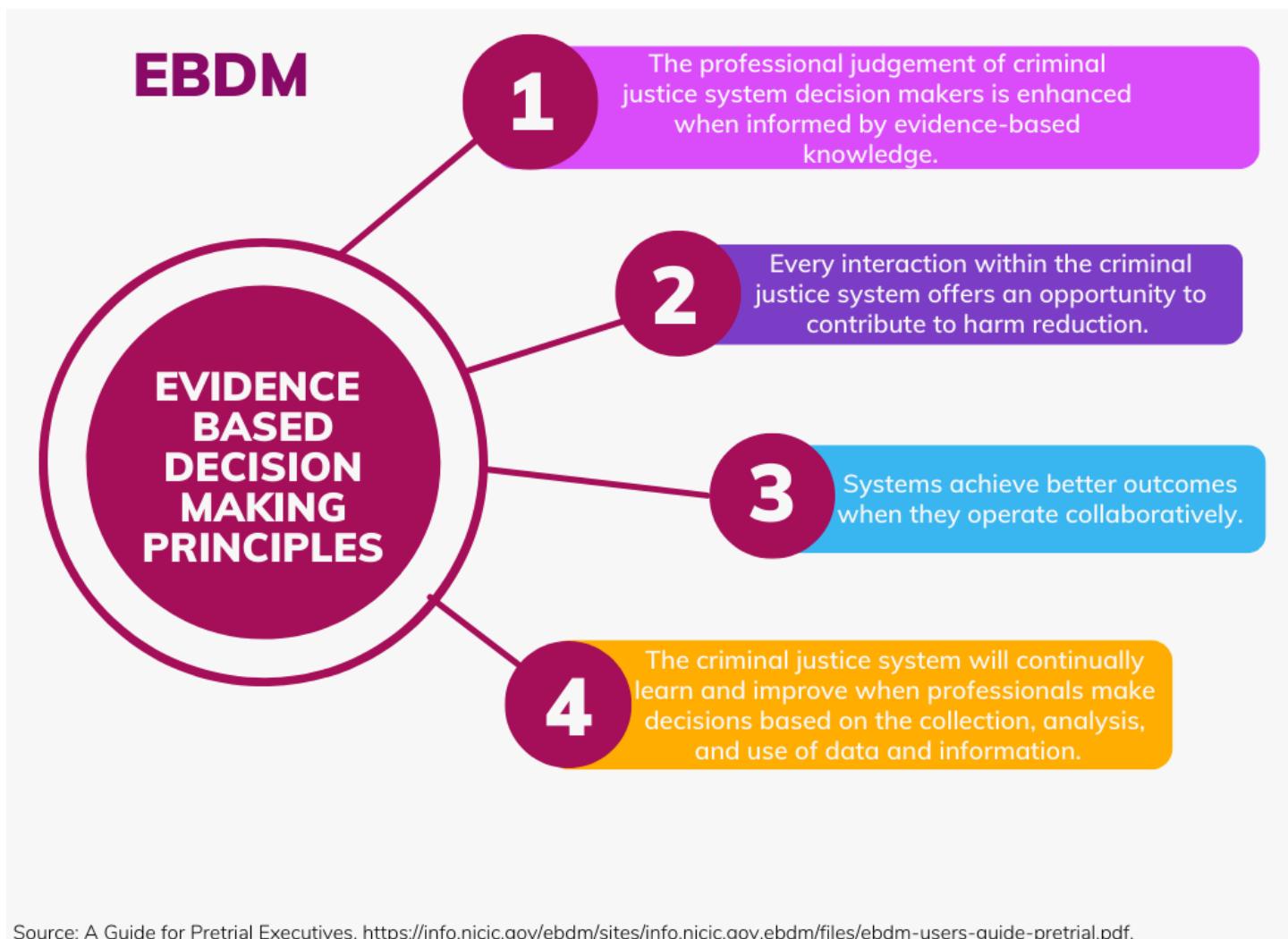
Elements not included in NJ Risk Assessment:

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>.

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

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;



- (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 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 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

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

Mental Health

There is significant research documenting the mental health needs of the jail population. For example, in 2005, the Bureau of Justice Statistics reported that 64% of people held in jails had a mental health problem.^{viii 7} While percentages of people in jails and prisons with serious mental illness differ considerably across jurisdictions, one study found that approximately 1 in 5 people held in jails had a serious mental illness; the study's authors note this estimate is likely to be conservative.^{ix 8}



Substance Use

One study indicates that people held in prison and jails are 7 times likelier than people in the general population to have a substance use disorder.^{xii} Using national data, the Prison Policy Institute found that in 2017 over half (52%) of people arrested multiple times reported a substance use disorder in the past year. In contrast, 36% of people arrested once and 7% of people not arrested reported a substance use disorder in the past year. When comparing the rates of substance use by gender, one study found that women who are incarcerated are slightly more likely to have a substance use disorder than men who are incarcerated in jails and prisons (66.1% vs. 64.3%).^{xiii 10}



Co-Occurring Disorder

There is a high prevalence of comorbidity between substance use disorders and other mental illnesses.⁹ 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.^x Research has found that women who are incarcerated in jails and prisons are significantly more likely to have co-occurring substance use and mental health disorders (40.5% vs. 22.9%) than men.^{xi}



Trauma, Victimization, and Abuse

Lifetime exposure to trauma is substantial among people impacted by the criminal legal system.^{xiv} In fact, reported rates of traumatic experiences are so high, particularly among those with serious mental illness, that the Substance Abuse and Mental Health Services Association (SAMHSA) considers trauma to be an almost universal experience.^{xv} Although trauma and post-traumatic stress disorder prevalence rates vary by study and sample, research indicates that the rates of victimization and trauma among women impacted by the criminal legal system are higher than those of men.^{11 12}



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

Education

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, compared to 51% of those who were arrested once and 33% of people who had no arrests in the past year.^{xvi}



Homelessness

People experiencing homelessness and housing insecurity report histories of arrest and incarceration more often than the general public.^{xviii} A 2008 national study found that recent homelessness was 7.5 to 11.3 times more common among people in jail than in the general population.^{xix} One report documented that more than 25% of people experiencing homelessness reported being arrested for activities that were a direct result of their homelessness.^{xx} A systematic review found that 63%–90% of individuals experiencing homelessness with severe mental illness had been arrested at least once, 28%–80% had been convicted of a crime, and 48%–67% had been incarcerated.^{xxi 13}



Healthcare

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 (8%) and were only slightly more likely to be uninsured than people arrested just once (23%).^{xvii}



Poverty/Indigence

Many people in the pretrial population experience poverty and indigence. In a national survey of people in jail in 2002, 59% reported a monthly income of less than \$1,000 and 19% reported no income.^{xxii} A more recent national survey found that in 2017 nearly half (49%) of people with multiple arrests in the past year had individual incomes below \$10,000 per year, while 36% of people arrested only once and 21% of people who had no arrests had incomes below \$10,000.^{xxiii 14}



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 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 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



NJ REENTRY CORPORATION

Veterans Outreach Services

The banner features a large American flag on the left and three bronze statues of soldiers in the center, representing different branches of the military. The statues are positioned as if they are on a mission, with one holding a rifle and another looking off into the distance.

Below the banner is a dark blue footer bar containing the seals of the five branches of the U.S. military: Army, Navy, Marine Corps, Coast Guard, and Air Force.

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 spurned 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,

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.



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



Individualization

Swiftness

Proportionality

Certainty

Fairness

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 pre-trial 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. 2014, c. 31 (C.2A:162-22) (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;
- (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

tion 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-

cutor 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 defendant 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 defendant;

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 co-operate 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. 2014, c. 164 (C. 52:14-19.1) (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 bio-psychosocial 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 to 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 to 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.

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

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