

NJSBA

New Jersey State Bar Association

COMMISSION ON RACIAL EQUITY IN THE LAW

FINAL REPORT

April 2022

FOREWORD

This Report reflects the combined analysis, thoughts and extensive experience of each individual serving on the Commission on Racial Equity and the Law. The members are:

Co-Chairs:

Carolyn V. Chang
G. Glennon Troublefield

Subcommittee Chairs:

Civics & Education

Chair, Tracy M. Thompson,
State of New Jersey, Insurance Fraud Prosecutor
Dean L. Burrell
Linda Carter.
Tabatha Castro
Robyn B. Gigl
Emily S. Kelchen
Kimberly Mutcherson
Cheyne R. Scott
John L. Shahdanian II

Culture of the Profession

Chair: The Honorable Dara Govan, J.S.C.¹
Domenick Carmagnola, President-Elect, NJSBA
Lloyd Freeman
Norberto A. Garcia, Secretary, NJSBA
Desha Jackson
Evelyn Padin, Esq. Past-President, NJSBA
Angela Scheck, Executive Director, NJSBA
Kimberly A. Yonta,, Immediate Past President, NJSBA

Mandatory Minimum Sentences

Raymond M. Brown
Brian J. Neary

Municipal Courts

Chair: Brian J. Neary.
Shelia Ellington

¹ Judge Govan was confirmed as a Superior Court Judge in April 2021, at which point she resigned from her position. Lloyd Freeman, succeeded Judge Govan as chair.

The Honorable Travis L. Francis, AJSC (ret.)
Eugenia M. Lynch
Henal Patel
Carolyn V. Chang

Pipeline to Leadership

Chair: Fruqan Mouzon
Jennifer Downing-Mathis
Ayesha Krishnan Hamilton
Steve G. Hockaday
Honorable Julien X. Neals, U.S.D.J.
Maria P. Vallejo

Policing

Chair: Ehsan F. Chowdhry
Nina D. Bonner
Rahil Darbar
Norma R. Evans.
The Honorable Lawrence M. Lawson, AJSC (ret.)
James A. Lewis V
Lawrence S. Lustberg
Daryl Williams

TABLE OF CONTENTS

TABLE OF CONTENTS.....	4
EXECUTIVE SUMMARY.....	5
CULTURE OF THE PROFESSION REPORT	11
PIPELINE FOR LEADERSHIP REPORT	13
CIVICS AND EDUCATION COMMITTEE REPORT	15
NEXT STEPS/CONCLUSION	18
POLICING SUBCOMMITTEE REPORT.....	20
CIVILIAN COMPLAINT REVIEW BOARDS IN NEW JERSEY	20
POLICE LICENSING	24
NO-KNOCK WARRANTS	28
MUNICIPAL COURTS COMMITTEE REPORT & ACTION PLAN	38
SPECIAL STANDING COMMITTEE	41
CONCLUSION.....	44
ACKNOWLEDGEMENTS.....	46
APPENDICES.....	47
Appendix A: PROPOSED RESOURCES/SPEAKERS/CLES	48
Appendix B: “Day of Service Expungement Clinic”	53
Appendix C: New Jersey Criminal Sentencing and Disposition Commission 2022 Report....	56

EXECUTIVE SUMMARY

Introduction

Institutional racial inequality, racism, and disparities in our legal system have existed for decades. The need for racial justice was ushered in two years ago with the senseless and unprovoked public police murder of George Floyd. The murder of George Floyd triggered universal calls for racial justice in multiple legal and non-legal segments of our society around the world, including the New Jersey State Bar Association (NJSBA). In July 2020, then NJSBA President Kimberly A. Yonta decided to take a stand. President Yonta announced the creation of the NJSBA Commission on Racial Equity in the Law (Commission).

Under the guidance of President Yonta and the NJSBA Board of Trustees (Board of Trustees), thought leaders and stakeholders within our legal community were invited to come together under the umbrella of the NJSBA to face racial justice head on. Representatives of affinity bar associations, as well as leaders in the fields of civil rights, criminal law, and judicial bias accepted invitations to join the Commission. President Yonta requested the Commission to examine ongoing anti-Black racism in New Jersey's legal system and in the practice of law. It was President Yonta's hope that the Commission's work would lead to recommendations to promote educational awareness; address inequities experienced within and outside of our criminal justice system; create robust pipelines to practice for young attorneys of color; and improve our legal system within New Jersey.

This report reflects the Commission's pursuit of the goals identified by President Yonta and embraced by the Board of Trustees.

Scope of the Commission's Work

The Commission was divided into a number of sub-committees, including: Policing; Municipal Courts; Civics & Education; Pipeline for Leadership; the Culture of the Profession; and The Model Penal Code. Each sub-committee convened separate meetings via Zoom to discuss the scope of their charter, to address both legal and social justice issues that have plagued the criminal justice system in New Jersey, and to develop a series of resources the NJSBA can utilize to educate the public and to improve access to justice. The common thread

running through the recommendations was the need for the NJSBA to promote a heightened awareness of equality within our legal system.

Over the course of two years, the Commission responded in real time to a number of issues and public policy proposals relating to legislation, criminal justice, and bar association education. The Commission utilized the diverse experiences of its members to address legal issues from perspectives that were unmatched by existing entities within the NJSBA's structure. As sample of the Commission's work including the following:

- Support of S2963, a bill that supports civilian review boards with suggestions for amendments to allow community flexibility (The Board of Trustees adopted the recommendation of the Commission regarding this bill);
- Support of S854/237, known as Laura Wootten's Law, which requires civics instruction in middle school, with suggested amendments;
- Support of S3456, which supports the elimination of mandatory minimum sentences;
- Comments on the Judiciary's proposal on implicit bias training for jurors;
- Co-sponsorship and participation of Commission members in the October 2020 Symposium on Race and the Law;
- Co-sponsorship and participation of Commission members on a program hosted by the NJSBA Minorities in the Profession Section on Pathways to the Bench;
- The compilation of a comprehensive educational resource guide on race and equity issues; and
- Participation in an annual NJSBA meeting of managing partners that included Commission members and affinity bar representatives to discuss meaningful diversity strategies for law firms, such as the Mansfield Rule.

The examples mentioned reflect a fraction of the Commission's work. Subcommittees convened throughout the 2020-2021 and 2021-2022 bar association year. With the support of NJSBA President Domenick Carmagnola, the NJSBA Executive Committee, and the Board of Trustees, the momentum surrounding the creation of the Commission continued in earnest this year.

The next steps

The work of the Commission is far from being over. Legal issues of ongoing anti-Black racism in New Jersey's legal system and in certain segments of the practice of law continue to reveal themselves. As the Commission was preparing this report, the apparent disparate treatment of teenagers at the Bridgewater Commons Mall in February 2022 is a reminder that the drive toward racial equity and equality remains alive. That particular event was a reminder that disparities in New Jersey's arrest, incarceration and sentencing rates continue to exist. Issues raised at the recently convened Judicial Conference on Jury Selection, including implicit bias among judges, attorneys and jurors; the demographic imbalance of the jury array, and the need to preserve peremptory challenges to protect criminal defendants from juror bias, were further reminders that achieving racial harmony can be elusive.

The Commission is reminded of the NJSBA's mission. The NJSBA's mission states in part: (1) to serve, protect, foster and promote the personal and professional interests of its members; (2) to serve as the voice of New Jersey attorneys to other organizations, governmental entities and the public with regard to the law, legal profession and legal system; (3) to promote access to the justice system, fairness in its administration, and the independence and integrity of the judicial branch; (4) to encourage participation in voluntary pro bono activities; (5) to foster professionalism and pride in the profession and the NJSBA; (6) to provide educational opportunities to New Jersey attorneys to enhance the quality of legal services and the practice of law; and (7) to provide education to the New Jersey public to enhance awareness of the legal profession and legal system.

Consistent with the NJSBA's mission, the Commission's recommendations are foundations for greater processing and implementation within the NJSBA. Decades of systematic racism in segments of the law cannot be changed overnight, let alone over two years. More support and effort are required. The NJSBA has demonstrated leadership over the years in areas where others have

turned away or refused to have the tough conversations. Racial and social justice issues are tough conversations to have, but the NJSBA's work toward fulfilling its mission has brought together lawyers and leaders to make a significant change in equity and equality in New Jersey.

For those reasons, the Commission's recommendations include the request for the Board of Trustees to establish the Commission as a Special Committee, under the authority granted to the Board of Trustees in Article X, Section 1, Article XI, Sections 1(b), 3 and 6 of the NJSBA's Bylaws. No other Section, Division or Committee exists within the NJSBA that addresses racial disparities and social justice issues within our civil and criminal justice system that impact members of the public.

In summary, the issues addressed by the Commission -- to examine ongoing anti-Black racism in New Jersey's legal system and in the practice of law -- are not resolved by the issuance of one report. So that momentum will not fade, we the Commission respectfully requests that upon acceptance of the report, the Board of Trustees take formal action to create a foundation for the continued work toward racial equity in the legal system and the practice of law. We ask that the Board approve creating a Special Committee on Racial Equity in the Law to operate under the bylaws of the organization consistent with other special committees. This is work that requires commitment, vigilance and time, and while the Commission's creation was precipitated by the police murder of a Black man recorded in plain view for millions across the globe to see, and the ensuing racial reckoning that swept across the nation, the Commission's existence should not be subject to news cycles. Systemic racism exists and eradicating it from our justice system is crucial to ensuring public confidence in the system to which we, as lawyers, have pledged our professional lives. The NJSBA must be a leading and consistent voice in helping to achieve these goals.

On behalf of our Commission, we want to express our sincere gratitude to Immediate Past President Kimberly A. Yonta, President Domenick Carmagnola, and the entire Executive Committee for their leadership, guidance and support. We also want to personally thank Angela C. Scheck, Paula Saha and the entire NJSBA staff for their exceptional insights and assistance over this past bar association year. In addition, our thanks go out to the chairs of all the sub-committees and the members of the Commission who worked tirelessly to insure completion of this final report.

The Co-Chairs cannot think of a more appropriate quote than Emperor Haile Selassie's 1963 iconic speech before the United Nations General Assembly,

which inspired the hit song “War” by Bob Marley and the Wailers (1976 Island Records album, Rastaman Vibration) to close out the Commission’s final report:

On the question of racial discrimination, the Addis Ababa Conference taught, to those who will learn, this further lesson:

*that until the philosophy which holds one race superior and another inferior is finally and permanently discredited and abandoned;
that until there are no longer first class and second-class citizens of any nation;
that until the color of a man’s skin is of no more significance than the color of his eyes;*

*that until the basic human rights are equally guaranteed to all without regard to race;
that until that day, the dream of lasting peace and world citizenship and the rule of international morality will remain but a fleeting illusion, to be pursued but never attained.*

Selassie was correct: however, the incredible work of the Commission and the lyrics of Bob Marley’s “Redemption Song” has given us hope that we are moving closer to a more equitable future in the law.

*Old pirates, yes, they rob I
Sold I to the merchant ships
Minutes after they look I
From the bottomless pit*

*But my hand was made strong
By the hand of the Almighty
We forward in this generation*

Triumphantly

*Won’t you help to sing
These songs of freedom?
‘Cause all I ever have
Redemption songs
Redemption songs*

Carolyn V. Chang
G. Glennon Troublefield
Co-Chairs NJSBA Commission on Racial Equity in the Law

March 2022

CULTURE OF THE PROFESSION REPORT

I. Preliminary Statement

The Committee on the culture of the legal profession was charged with identifying and researching obstacles to the advancement of attorneys of color in the legal profession, and proposing policy solutions that should be implemented to abolish these impediments. The scope of this committee's work was to include the state bar association; county bar associations; law firm culture, hiring and advancement practices; and more.

II. Process/Methodology

In the Committee's first meeting, the group had a robust discussion, with each committee member answering in one sentence how they would describe the culture of the legal profession. The answers were varied:

- The culture of the legal profession is one that espouses many virtues, but does not practice them;
- The culture of the legal profession is evolving with successful change; and
- The culture of the legal profession is too focused on business and not on the individual attorneys that make up the profession.

The conversation then turned to identifying the barriers for attorneys of color related to the culture of the profession. They included:

- Exclusionary networking excursions like outings to golf courses, country clubs;
- Law firm resistance to change;
- Law firms often make attorneys of color the face of diversity at the law firm;
- European standard dress codes where attorneys of color are advised to conform to European standards, e.g., cut or straighten their hair;
- Mentorship programs that lack real accountability;
- Marginalization, for example, attorneys of color say they don't get the same assignments as their white counterparts; and
- Asking attorneys of color only to speak on diversity and not their substantive practice areas.

III. Recommendations and Action Items:

- Bringing cultural competency training to law firms. The Committee endorsed the idea of putting together cultural competency programming that could “travel” to law firms. In addition, the Committee recommended that the NJSBA create a library of videos of cultural competency training programs that law firms can purchase for use. (Note: the MCLE Board has since ruled that programming recorded before Nov. 1 cannot be used to meet the Diversity, Inclusion, and Elimination of Bias CLE requirement. The Committee will therefore be re-creating this programming specifically for use by law firms.)
- Host a meeting with managing partners of New Jersey’s biggest law firms and representatives from New Jersey’s Affinity Bar Associations. This meeting took place in March 2021, and subcommittee member Lloyd Freeman spoke at length about the Mansfield Rule, an initiative to improve diversity in law firm hiring. The Committee recommends that dialogue with managing partners about diversity, inclusion and equity issues be ongoing and that the NJSBA be the facilitator for that dialogue.
- At the bar association level, putting a friendlier face on networking opportunities, which can often feel unwelcoming to newcomers, in particular attorneys of color. One idea is to have badges designating “first-timers” at Bar events – similar to an initiative at the National Bar Association – so that bar leaders in particular and others could be extra welcoming of newcomers.
- Data collection: 1) engage in a project to collect anecdotal data on the experiences of attorneys of color in law firms. 2) explore more systemic data collection project, possibly replicating the ABA’s Visible Invisibility Study: <http://www.nextions.com/wp-content/uploads/2017/05/visible-invisibility-aba-commission-on-women-in-the-profession.pdf>

PIPELINE FOR LEADERSHIP REPORT

I. Preliminary Statement

The Committee was charged with examining ways to eliminate barriers to participation for attorneys of color when it comes to the governmental and political arenas. The Committee was charged with determining what those barriers are, and then considering programs, actions and policies that could lead to inclusion of more people of color on the bench, in county prosecutor offices and other state agencies, in governmental roles and in politics.

II. Process/Methodology

The Committee met twice with email correspondence in between. At the first meeting, the group engaged in a wide-ranging conversation about the specific barriers to participation in the governmental and political arenas for people of color. These included:

- A lack of understanding of the political “game” in New Jersey;
- A lack of connections to power in communities of color;
- A lack of understanding on how diverse candidates become part of the “pool” of candidates for judicial positions;
- The “money factor” – determining who is donating to political campaigns. There is a barrier for government attorneys who are limited in their ability to be politically active. It should be noted that many attorneys of color work in public positions.

The suggestion was made that the Committee’s work could focus on analyzing access to leadership pathways and applying pressure when it comes to understanding what practices and policies are in place. Potential ideas could include:

- A survey of State senators that seeks a closer look at their criteria when reviewing names for judgeships and other leadership positions;

- An anonymous survey to judges about their appointment process and what their road entailed;
- A “Pathways to the Judiciary” program with a tie-in to affinity bar associations;
- The creation of “model criteria” for judicial nominations; and
- Meetings with State senators to speak in person about their judicial criteria for nominations.

The group also discussed existing diversity within members of the judiciary, since numbers show the bench might actually be more diverse than the legal profession. The point was made that the judiciary should not so much reflect the legal profession, but should reflect the population of New Jersey overall.

III. Action Items and Recommendations

The group decided to proceed first with a survey that would go to State Senators, a copy of which is included in this report. After the survey was disseminated to the members of the Commission for feedback, and questions were raised about the truthfulness of the responses that would be elicited by the survey, the group decided they would instead start with in-person meetings. Those meetings will be scheduled in conjunction with the NJSBA Governmental Affairs Department.

In addition, Subcommittee Chair, Fruqan Mouzon and Commission Co-Chair Carolyn V. Chang participated in a “Pathways to the Bench” program sponsored by the NJSBA’s Minorities in the Profession Section in December of 2020. The committee recommends a video of the program be included among the resources on the Commission section of the NJSBA website. Further, the Commission recommends that this program is included in the Annual or Midyear meeting.

CIVICS AND EDUCATION COMMITTEE REPORT

“Civics was a class that used to be required before you could graduate from high school. You were taught what was in the U.S. Constitution. And after all the student rebellions in the Sixties, civics was banished from the student curriculum and was replaced by something called social studies. Here we live in a country that has a fabulous constitution and all these guarantees, a contract between the citizens and the government – nobody knows what’s in it...And so, if you don’t know what your rights are, how can you stand up for them? And furthermore, if you don’t know what’s in the document, how can you care if someone is shredding it?” – Frank Zappa

I. Preliminary Statement

The Committee was charged with examining ways to eliminate systemic racism in the law specifically through civics – the study of the rights and duties of citizenship- and education more generally. Promoting civics and knowledge that addresses anti-Black racism have been identified as ways to address the root causes of inequities in the profession and in the law itself. Implementing some of the recommendations and next steps will require additional personnel and will be costly. Traditional ways of evaluating CLEs and other programming may have to be revisited since costs may exceed initial return for some time. However, the NJSBA’s budget should reflect the values associated with the Commission if we are to successfully accomplish our mission.

II. Process/Methodology

The Committee was instructed to think broadly in determining the kinds of programs the NJSBA can establish and promote that will inspire the eradication of racism in the law, including, but not limited to programming for high school, college, and law school students as well as working with the NJSBA's Institute for Continuing Legal Education. Lastly, it was recommended that the Committee review existing programs offered by the NJ State Bar Foundation (NJSBF) and the NJSBA's Benchmark Civics Program.

The Committee met on October 8, 2020, December 1, 2020, and March 25, 2021. These meetings included guest speakers from the NJSBA, NJSBF and the New Jersey Senate. The first meeting was devoted to organizing the Committee, discussing its charge, and developing a strategy for achieving its mission. Preliminary discussions also focused on establishing a baseline understanding of the problem; and the relevancy of civics and education to addressing the issue of equity in the law. Subsequent meetings featured guest speakers and discussion of ideas. Between meetings, members were encouraged to submit educational

resources and proposed speakers regarding civics and/or focused on providing a context for people to understand the dynamics of racism in the United States.

To aid in understanding the issue, the Committee viewed “The Unequal Opportunity Race,” a video that showcased the obstacles created and challenges faced by Black Americans due to long-standing systemic racism. Some of the challenges detailed in the short video included, but were not limited to, poor educational opportunities, wealth disparities, housing segregation and the school-to-prison pipeline. Upon recommendation to Commission co-chairs, this video was played at a full meeting of the Commission, where it was well received and sparked a healthy debate regarding the NJSBA’s potential use of the video in educational programming.

The Committee identified key ways to respond to its charge. It identified key programming, dynamic speakers, civics resources and discussed various ways in which these could enable NJSBA to work to eliminate systemic racism in the law through civics and education. The sections that follow set forth the detailed results of the work of the Committee to date.

III. Summary of Speakers and Presentations

As part of its work, the Committee thought it crucial to invite guest speakers to help the committee members better understand what exists, what is needed, and what is possible in New Jersey when it comes to the relationship among civics, education, and antiracism. Over the last several months, we met with Mary Jean Barnes and Elissa Zylbershlag, both from the NJSBF, to discuss the current resources relevant to our mission. Next, Executive Director Angela Scheck attended our meeting to provide an overview of the NJSBA budget process, as well as help us understand what resources, financial and otherwise, are available from the NJSBA to support civics and antiracism related work for attorneys and others in New Jersey. Lastly, Sen. Troy Singleton, his Policy Coordinator, David Smith and Lisa Chapland, NJSBA Senior Managing Director of Government Affairs, joined us to discuss how the Committee could support Senator Singleton’s bill, “Laura Wooten’s Law,” which would require civics education for middle school students in New Jersey.

Recommendations

- Support Civics Education in schools via legislation such “Laura Wooten’s Law” requiring civics in middle school and beyond.

- Develop continuing legal education or other training around the unequal opportunity race video. Require every officer and attorney in a leadership position of the NJSBA (including Trustees, Section and Committee chairs leaders and Nominating Committee members) to receive the same baseline training.
- Update the NJSBA Trustee Diversity Checklist, and other methodologies to increase Board accountability.
- Create a section of the NJSBA website that includes a relevant link-enabled Resource list. This will also include a Glossary of Terms, such as:
 - Implicit Bias;
 - Microaggressions;
 - Prejudice;
 - Discrimination;
 - Racism;
 - White Supremacist System; and
 - Equity v. Equality.

Please see Appendix A of this report for the Committee's list of books, articles, speaker recommendations and other resources for the website as well as the development of future programming.

NEXT STEPS/CONCLUSION

Now the real work begins. Our demanding careers, ever increasing personal responsibilities, pandemic challenges, the continued witnessing of traumatic racial events and the uncertainty of life in general, make this work exhausting. Yet, we must labor on! Below are our action items, requests and next steps on our journey toward substantive and complete transformation.

- Develop a Racial Equity Impact Assessment (REIA) tool and attach a REIA Statement to any and all legislation advanced and/or supported by NJSBA.
- <https://www.raceforward.org/practice/tools/racial-equity-impact-assessment-toolkit>
- Determine which NJSBF's programs can be converted into CLE programs.
- Discuss the role of music and a possible program to educate and support civics.
- Review relevant portions of the ABA Civics survey
<https://www.abajournal.com/web/article/2021-civics-survey>
- Evaluate NJSBA members' points of engagement (website, mail, email) to examine ways we could include the NJSBA diversity and inclusion statement and other D&I resource links.
- Provide all NJSBA officers, trustees, and nominating and JPAC committees members, and section/committee leaders with diversity, equity and inclusion materials, and require acknowledgement of their review.
- Invite Minorities in the Profession Section and Diversity Committee officers to a meeting for their input and role.

- Review NJSBA Statement of Diversity & Inclusion.
- Evaluate strength of the NJSBA D&I Action Plan.
- Determine ways NJSBA can lead campaign to return Civics 101 into the public schools' curriculum.
- Develop a process by which to evaluate and update materials and resources available on the Commission's webpage.
- Request the Commission to have the NJSBA or appropriate Commission committee engage in a study to determine how shifting the financial income obtained from underserved, under-resourced, neglected, and marginalized communities in legal fees – through the legal supply chain in the form of legal fees and salaries, to better served and resourced communities, promotes racial inequities.
- Request the Commission to ask NJSBA to discuss and issue a statement regarding the George Floyd Policing Act – National Criminal Justice Reform.

POLICING SUBCOMMITTEE REPORT

CIVILIAN COMPLAINT REVIEW BOARDS IN NEW JERSEY

On September 9, 2010, the American Civil Liberties Union of New Jersey (ACLU-NJ) formally petitioned the U.S. Department of Justice (DOJ) to conduct a “pattern and practice” investigation of the Newark Police Department (NPD).

See

<https://www.aclunj.org/files/5213/1540/4574/090910NPDUSDOJPEtition.pdf>

. The petition identified 407 allegations of NPD misconduct over a two-and-a-half year period, along with over 80 civil rights lawsuits that had been settled or remained pending during that same period.

The DOJ subsequently conducted an investigation and issued its findings on July 22, 2014. *See*

https://www.justice.gov/sites/default/files/crt/legacy/2014/07/22/newark_findings_7-22-14.pdf. After a comprehensive review, DOJ found that the NPD had

engaged in “a pattern or practice of constitutional violations in the NPD’s stop and arrest practices, its response to individuals’ exercise of their rights under the First Amendment, the Department’s use of force, and theft by officers.” DOJ Report at 1. The DOJ Report specifically criticized the NPD’s Internal Affairs Unit (IA Unit), finding “deficiencies in the NPD’s systems that are designed to prevent and detect misconduct, including its systems for reviewing force and investigating complaints regarding officer conduct.” *Ibid.*; *see also id.* at 35 (“there are serious deficiencies in the NPD’s handling of civilian complaints that translate to a lack of accountability for serious misconduct”). According to the DOJ Report, “IA sustained only one misconduct complaint of excessive force in the six-year time period from 2007 to 2012,” which the DOJ found to be “implausible on its face.” *Ibid.* The DOJ also found low rates of sustaining civilian complaints on issues other than excessive force, making it “exceedingly rare for the NPD to sustain citizen complaints of misconduct, particularly serious misconduct.” *Id.* at 35-36.

The DOJ Report resulted in a federal complaint against the City of Newark, filed on March 30, 2016, and a corresponding Consent Decree filed on April 29, 2016. *See* <https://www.justice.gov/opa/file/836901/download>. The Consent Decree required, among many other reforms, the establishment of a “civilian oversight entity” that would, “at a minimum, include the substantive and independent review of internal investigations and the procedures for resolution of civilian complaints; monitoring trends in complaints, findings of misconduct, and

the imposition of discipline; and reviewing and recommending changes to NPD's policies and practices, including, but not limited to, those regarding use of force, stop, search, and arrest." Consent Decree ¶ 13.

The ACLU-NJ and other advocates, including Newark Communities for Accountable Policing (N-CAP), pushed for a more robust and effective Civilian Complaint Review Board (CCRB) that would exercise meaningful authority over the NPD. As the former director of the ACLU-NJ has written, "[a]rguably, a weak civilian review board is worse than no civilian review board because it gives the illusion of independent accountability but actually provides little to no accountability." Udi Ofer, "Getting It Right: Building Effective Civilian Review Boards to Oversee Police," 46 Seton Hall L. Rev. 1033, 1052 (2016). And indeed, a survey of civilian review boards overseeing the 50 largest police departments in the United States showed that many of them had key features beyond those described in the Consent Decree, including community-based leadership, subpoena power, the authority to influence final disciplinary decisions, and the authorization to review and recommend changes to police department policies and practices. *See id.* at 1041-43. Thus, the ACLU-NJ proposed, and Newark adopted, a CCRB that included several key characteristics: (1) board membership nominated by community civic organizations; (2) independent investigatory authority, including subpoena power; (3) the ability to ensure that its factual findings of misconduct will, unless clearly erroneous, result in officer discipline pursuant to an agreed-upon disciplinary matrix; (4) the power to audit police policies and practices, in order to recommend revisions; and (5) public transparency in reporting on its activities and on the conduct of the NPD. *See id.* at 1043-52; Newark Code § 2:2-86.

Shortly after the adoption of the ordinance establishing the CCRB, the local chapter of the Fraternal Order of Police (FOP) filed a lawsuit in the Chancery Division challenging the lawfulness of the ordinance. On cross-motions for summary judgment, the trial court held that the CCRB was limited to an "oversight function," and enjoined it from investigating individual civilian complaints of officer misconduct, reviewing the NPD's IA Unit's investigations, or subpoenaing witnesses and documents. Newark appealed and the Appellate Division largely reversed, with only two exceptions—that the CCRB's fact-finding could not bind the Newark Public Safety Director in his imposition of discipline, and that a complainant's identity could not be revealed in the course of the CCRB's public hearings. The Appellate Division thus reinstated the powers granted to the CCRB by the ordinance. *See Fraternal Order of Police, Newark Lodge No. 12 v. City of Newark*, 459 N.J. Super. 458 (App. Div. 2019).

The FOP sought and was granted New Jersey Supreme Court review; now, the Attorney General joined the FOP's efforts, urging reversal of the Appellate Division decision. On August 19, 2020, the Court modified the Appellate Division's opinion, curtailing several of the CCRB's powers. *See Fraternal Order of Police, Newark Lodge No. 12 v. City of Newark*, 244 N.J. 75 (2020). The Court held, as a general matter, that a municipality is not preempted from establishing a CCRB. *Id.* at 103. However, the Court ruled that several provisions of Newark's ordinance conflict with existing state law. Specifically, the Court concluded that Newark's CCRB could not "conduct concurrent investigations" along with the NPD internal affairs department, *id.* at 108; could not "review and critique the handling of an individual IA investigation into alleged police misconduct," *id.* at 110; and "is not invested with subpoena power," *id.* at 112. The Court, however, made clear that the Legislature could modify state statutory law to permit Newark's CCRB to fully operate as envisioned by the ordinance. *See id.* at 80-81 ("The civilian review board's powers must comply with current legislative enactments unless the Legislature refines the law to specifically authorize certain functions that Newark intends to confer on its review board."). Indeed, the Supreme Court's decision, however disappointing, set forth a road map for legislative reform that would make CCRBs a real possibility.

To that end, the Legislature is currently considering a bill, A. 4656, that would explicitly authorize the establishment of CCRBs with powers like those contained in Newark's ordinance. *See* https://www.njleg.state.nj.us/2020/Bills/A5000/4656_R1.PDF. Specifically, the bill permits a CCRB to investigate complaints independently of IA, *see* Section 4(a)(3), and also to review a completed internal affairs investigation, *see* Section (4)(1)(5).² The bill further empowers a CCRB to subpoena witnesses and documentary evidence. *See* Section (4)(c).

On March 17, 2021, following testimony in support of the bill from the Mayors of Newark, Jersey City³, Paterson, and Plainfield,⁴ as well as oral and written support from approximately 130 community members, A. 4656 passed out of the

² The current draft of A. 4656 does not permit a CCRB to investigate concurrently with an IA investigation unless the IA investigation is not completed within 120 days. *See* Section 4(d)(1). Discussions are ongoing to revise this provision so that it will fully permit concurrent investigations.

³ On April 15, 2020, Jersey City passed a resolution stating that when A. 4656 passes, the City will pass a CCRB ordinance with full investigatory and subpoena powers. The police unions immediately filed suit to enjoin the resolution; as of this writing, no action has been taken on that law suit.

⁴ In addition to these cities, the City of Orange Township has also proposed a CCRB ordinance.

Assembly Community Development and Affairs Committee by a 4-1-1 vote. Since then, the Legislative Black Caucus has encouraged Speaker Craig Coughlan to post the bill for a vote by the full Assembly. Senators Ronald Rice and Shirley Turner have also introduced a companion bill in the State Senate, S. 2963.

POLICE LICENSING

In the United States, certification and licensure requirements for law enforcement officers vary significantly from state to state. Policing in the United States is highly fragmented and there are no national minimum standards for licensing police officers in the U.S. There are, however, several states that have stringent requirements for licensing and continuing education in order for police officers to remain active in the police force. At present, New Jersey's minimum requirements to be a police officer include (1) being a United States citizen, (2) graduating from high school or possession of an approved high school equivalent certificate, and (3) not less than 21 years of age or over 35 years of age. The New Jersey Police Training Commission (PTC) has granted approval to police academies in this state to conduct the Alternate Route Basic Course for Police Officers. This program permits qualified applicants to apply for admission to an approved academy for the purpose of participating in the Basic Course for Police Officers. If within three (3) years of completing the academy training, the police officer receives appointment as a regular, full-time police officer, he or she will receive Certification from the PTC. Thereafter, there are no additional continuing education requirements for police officers to maintain their Certification. **New Jersey is one (1) of five (5) states that does not license police officers.**

On Wednesday, June 24, 2020, Attorney General Gurbir S. Grewal announced that the PTC, which establishes statewide law enforcement standards, voted unanimously in support of two (2) significant policing reform measures: to create a statewide police licensing program and to overhaul the statewide training programs for law enforcement officers. The Commission is unaware of any specific licensing or statewide training programs that have been implemented by the PTC since this announcement. In an effort to assist the PTC with this process, the policing subcommittee sets forth the following recommendations for licensing and continuing education requirements of New Jersey police officers. The recommendations are based on an exhaustive review of licensing and continuing educational requirements of other states. The Policing Subcommittee has identified those requirements that are deemed essential and critical to have a police force in New Jersey that serves and protects its citizens, while helping to eradicate the excessive use of force that have plagued police departments throughout this country.

As of January 2022, the police licensing requirements remain under review by the Attorney General's Office.

A. Recommended Licensing Requirements for New Jersey Police Officers

For Individuals without a College Degree

Step 1 Earn a degree from an accredited, college or university.

Step 2 Gain admission to a PTC approved academy, complete the Basic Course for Police Officers, and pass the PTC's peace officer licensing examination.

Step 3 Be hired by a New Jersey law enforcement agency to receive a peace officer license.

Timeline Approximately four (4) years for a bachelor's degree program.

For Individual Already Possessing a Degree (Note: Degree must be from an accredited college or university.)

Step 1 Gain admission to a PTC approved academy, complete the Basic Course for Police Officers.

Step 2 Pass the PTC Peace Officer licensing examination.

Step 3 Be hired by a New Jersey law enforcement agency.

Timeline Approximately six (6) months depending on the time it takes the student to complete the PTC Basic Course for Police Officers and pass the PTC Peace Officer licensing examination.

Reciprocity for Individuals with Law Enforcement Experience

Step 1 Apply and meet the requirements for reciprocity or military reciprocity.

Regular reciprocity requirements:

- I. employment as a law enforcement officer within the past six (6) years and for at least three (3) years and possession of a post-secondary degree from an accredited school, OR

- II. employment as a law enforcement officer within the past six (6) years and for at least five (5) years.

Military reciprocity requirements:

- III. Four (4) years of cumulative experience in a law enforcement occupational specialty OR
- IV. Two (2) years of cumulative experience in a law enforcement occupational specialty plus a degree from an accredited post-secondary institution OR
- V. Experience as a full-time peace officer in another state combined with cumulative service experience in a military law enforcement occupational specialty totaling four (4) years.

Step 2 Pass the PTC reciprocity licensing examination.

Step 3 Be hired by a New Jersey law enforcement agency.

Timeline Approximately two (2) years for an associate degree program or four (4) years for a bachelor's degree program.

B. Continuing Education Requirements for New Jersey Police Officers

New Jersey police officers must obtain twenty-four (24) hours of Continuing Law Enforcement Education (CLEE) within a two (2) year period, with at least eight (8) of the twenty-four (24) hours coming from an "Approved Provider" of training. Of these twenty-four (24) hours, officers must obtain a minimum of:

- a. Two (2) hours in Legal Studies;
- b. Two (2) hours in Technical Studies;
- c. Two (2) hours in Interpersonal Perspectives;
- d. Two (2) hours of Skill Development in the area of Firearms;
- e. Sixteen (16) hours of Electives (Any of the above-listed core curricula areas);
- f. Six (6) hours of Racial Profiling training. Racial Profiling training is part of the required twenty-four (24) hours, not in addition to it.

- In addition, the PTC will promulgate minimum standards for training in de-escalation techniques, implicit bias training, procedural justice training, mental health resources and support available for law enforcement officers.
- Require each law enforcement agency in New Jersey to adopt a written policy stating that its officers had an affirmative duty to use de-escalation techniques whenever possible.
- Require police officers to take an examination that tests their knowledge and skills on de-escalation procedures every two (2) years. An officer that fails this examination will be placed on probation unless and until they pass the examination on one (1) of two (2) successive attempts. If an officer is unable to pass the de-escalation examination after three (3) attempts, their license will be permanently revoked.

NO-KNOCK WARRANTS

No-knock warrants give police (often SWAT teams) the authority to forcibly enter someone's residence without notice. Data for Progress and The Justice Collaborative (June 2020), *End No-Knock Raids*, [no_knock_raids.pdf](https://filesforprogress.org/no_knock_raids.pdf) (filesforprogress.org). The evidence, however, is clear: as police become increasingly militarized, few tactics have proven as dangerous as the use of no-knock warrants or forcible-entry raids to serve search warrants, practices which regularly introduce high levels of violence into missions that might otherwise be accomplished through patient stakeouts or, in some cases, simple knocks at the door.

Problems With No-knock Warrants

No-knock warrants account for a small share of the nearly one-thousand (1,000) fatalities each year in officer-involved shootings. The Washington Post (2021), Police Shootings Data Base 2015-2021, <https://www.washingtonpost.com/graphics/investigations/police-shootings-database/>. But what distinguishes these incidents from other risky interactions between the police and citizens, like domestic disputes, hostage-takings and confrontations with mentally ill people, is that they are initiated by law enforcement. Thousands of times a year, these raids exploit the element of surprise to effect seizures and arrests of unsuspecting citizens. But they have also led time and again to avoidable deaths, gruesome injuries, demolished property, enduring trauma, sullied reputations and multimillion-dollar legal settlements at taxpayer expense. Below is a snapshot of countless examples of what can and has gone wrong during the execution of no-knock warrants.

Forced Entry

In a country where four (4) in ten (10) adults have guns in their homes, no-knock raids incite predictable collisions between forces—officers with a license to invade private homes and residents convinced of their right to self-defense. Gallup Poll, *Guns #1645*, 2020, <https://news.gallup.com/poll/1645/guns.aspx>. The murder of Breonna S. Taylor, which has caused a national attention, exemplifies this issue. On March 13, 2020, Louisville police officers executing a no-knock warrant used a battering ram to enter the apartment of Ms. Taylor. Richard A. Oppel Jr., Derrick Bryson Taylor, and Nicholas Bogel-Burroughs, *What to Know About Breonna Taylor's Death*, The New York Times (April 26,

2020), <https://www.nytimes.com/article/breonna-taylor-police.html>. Ms. Taylor and her boyfriend, Kenneth Walker, were in bed when they heard loud banging at the door. Police officers broke their front door off its hinges, causing Mr. Walker to fire his licensed firearm at the suspected intruders. The officers fired back, striking Ms. Taylor five (5) times. As we all know, Ms. Taylor later died from her injuries.

Similarly, officers in Utah searching for marijuana conducted a raid of a former veteran's home in the middle of the night. Radley Balko, *Internal Documents Show that Utah Police Did Little Investigation Before Fatal Drug Raid*, The Washington Post (July 17, 2014), <https://www.washingtonpost.com/news/the-watch/wp/2014/07/17/internal-documents-show-that-utah-police-did-little-investigation-before-fatal-drug-raid/>. Here, too, law enforcement used a battering ram to break down the front door; the homeowner, Matthew Stewart, grabbed his firearm and a gunfight ensued. *Id.* Five (5) officers were wounded, the homeowner was shot twice and one (1) officer was killed. The homeowner was charged with a capital offense. *Id.* This same law enforcement unit, just months prior shot and killed Todd Blair during a drug (meth) raid; Blair was not the target of the no-knock warrant, but after he responded to sounds of suspected intruders by grabbing a club, officers shot him seconds after entering his home. *Id.*

Military-Style Tactics

No-knock raids have also been criticized for their military-like tactics. Kevin Sack, *Door-Busting Drug Raids Leave A Trail Of Blood*, the New York Times (March 18, 2017), <https://www.nytimes.com/interactive/2017/03/18/us/forced-entry-warrant-drug-raid.html>. For example, in May 2014, police officers in Georgia, equipped with a “door-breaching shotgun, a battering ram, sledgehammers, Halligan bars for smashing windows, a ballistic shield and a potent flash-bang grenade” executed a no-knock warrant on a small single-story house. *Id.* Officers rammed the door, yelled “Sherriff's department, search warrant,” and threw a flash-bang grenade into the home. *Id.* The grenade landed in a portable playpen where a 19-month-old baby was sleeping. The child suffered a long laceration and burns across his chest, exposing his ribs, and another gash between his upper lip and nose. *Id.*

Improper service

Additionally, no-knock raids often lead to the murder of innocent citizens as a result of predictable (and even, in some cases, arguably understandable) law enforcement error. Michael King, *Elderly Woman Killed, Baby Injured Prominent Cases of No-knock Warrants In Metro Atlanta*, *Alive* (September 23, 2020), <https://www.11alive.com/article/news/crime/use-of-no-knock-search-warrants-by-police/85-37602a98-cc01-4bc4-9e14-808087951151>. As just one example, in 2006, officers in Atlanta served a no-knock warrant at the wrong home. The homeowner, a ninety-two (92) year old woman, was shot and killed by police while defending herself from the suspected intruders. *Id.* Similarly, officers in New York killed a woman after executing a no-knock warrant on the wrong address. The officers threw a grenade into the unsuspecting resident's home, who suffered from a heart condition, and the resident died in the ambulance on the way to the hospital.

Lack of Adequate Oversight

Examples abound of deadly no-knock raids that occurred after being approved by judges despite a lack of evidence. Looking again to the case of Breonna Taylor, the police had been investigating two (2) men, one was Ms. Taylor's ex-boyfriend Mr. Glover, whom they believed to be selling drugs out of Taylor's home. Oppel Jr., Taylor, and Bogel-Burroughs, *supra*. The search warrant authorizing forcible entry into Ms. Taylor's home revealed that officers relied upon an incident in which Mr. Glover was seen walking into Ms. Taylor's apartment and leaving with a USPS package and the fact that a vehicle registered to Ms. Taylor was seen outside of Glover's address. This was enough for the judge to approve the raid of Ms. Taylor's apartment even though Mr. Glover did not live there. Predictably, the officers who executed the no-knock warrant found no drugs in Ms. Taylor's apartment.

Similarly, just hours before the officers threw a grenade into the nineteen (19) month old's playpen as discussed above, a county chief magistrate judge approved the use of a no-knock warrant and SWAT operations based upon the slim factual basis that three (3) informants had bought \$50 dollars of methamphetamine in the front yard of the home at issue and a year prior a rifle was reported at the address. Sack, *supra*. There was no showing of particular danger to law enforcement or the community upon which the no-knock warrant was based; to the contrary, officers ignored signs of children within the home and proceeded to execute the warrant anyway. Officers found no guns during the raid and, outside of meth residue in a single glass pipe, no drugs.

Finally, in the case of Mr. Blair, discussed above, officers ignored city records showing that their actual target had moved from the address months prior to the execution of the warrant. Balko, *supra*. Indeed, research shows that law enforcement often rely on confidential informants or unreliable information when seeking no-knock warrants, leading to botched raids with deadly consequences.

These examples, albeit anecdotal and based upon press reports, reveal that there is much that can be done to protect citizens and curtail their use and inform our recommendations, below.

V. The Nation's Response to the Death of Breonna S. Taylor

In the wake of Breonna S. Taylor's murder and national protests calling for change, many cities and states across the country have moved to ban or rein in the use of no-knock warrants. For example, three (3) months after Ms. Taylor's death, the city of Louisville unanimously passed an ordinance banning the use of no-knock warrants and mandating that body cameras be utilized every time officers execute any search warrant. Rebekah Reiss and Theresa Waldrop, *Louisville Council Passes 'Breonna's Law' Banning No-Knock Warrants*, CNN (June 11, 2020), <https://www.cnn.com/2020/06/11/us/louisville-breonnas-law-no-knock-warrants-ban/index.html>. In October 2020 Governor Ralph Northam of Virginia signed legislation banning the use no-knock warrants and blocking law enforcement from obtaining or utilizing grenades, high caliber firearms and weaponized aircrafts. Nathan Diller, *Virginia Becomes Third State To Ban No-Knock Search Warrants*, NPR (October 29, 2020), <https://www.npr.org/local/305/2020/10/29/929108657/virginia-becomes-third-state-to-ban-no-knock-search-warrants>. Similarly, the cities of Santa Fe, New Mexico; San Antonio, Texas; Indianapolis, Indiana; and Memphis, Tennessee all prohibited the use of no-knock warrants. Ray Sanchez, *Laws Ending No-Knock Warrants After Breonna Taylor's Death Are 'A Big Deal' But Not Enough*, CNN (October 10, 2020), <https://www.cnn.com/2020/10/10/us/no-knock-warrant-bans-breonna-taylor/index.html>. At the same time, state legislators across the country have introduced measures, in at least thirty-nine (39) states, seeking to rein in the use of no-knock warrants, while local governments or police departments have proposed or implemented another thirty-three (33) measures limiting or restricting the use of no-knock warrants. Tessa Duvall and Darcy Costello, *In Cities And States Across the US, Breonna's Law Is Targeting Deadly No-Knock Warrants*, Louisville Courier Journal (March 12, 2021), <https://www.courier-journal.com/story/news/local/breonna-taylor/2021/03/12/spread-of-breonnas-law-across-us-has-become-policy->

[legacy/4642996001/](https://www.cnn.com/2021/09/14/politics/justice-chokeholds-no-knock-warrant/index.html). And on September 13, 2021, Deputy Attorney General Lisa Monaco issued a memorandum significantly narrowing the circumstances in which federal officers may obtain and execute no-knock warrants. Christina Carrega, *Justice Department Limits Use Of Chokeholds And ‘No-Knock’ Warrants*, CNN Politics (September 14, 2021), <https://www.cnn.com/2021/09/14/politics/justice-chokeholds-no-knock-warrant/index.html>.

Several legislative proposals limit the use of no-knock warrants by raising the standard for obtaining them. In Kentucky, for example, the State Senate approved a bill mandating that no-knock warrants be issued only if there is “clear and convincing evidence” that the “crime alleged is a crime that would qualify a person, if convicted, as a violent offender.” Piper Blackburn, *Kentucky Senate Passes Bill to Restrict No-knock Warrants*, PBS (February 25, 2021), <https://www.pbs.org/newshour/nation/kentucky-senate-passes-bill-to-restrict-no-knock-warrants>. Similarly, in Ohio, proposals would only allow a judge to authorize a no-knock warrant only if officers establish probable cause to believe there is “substantial risk” of serious physical harm to officers. John Fuddy, *Prosecutors From Three Largest Counties Propose Limits On Use Of No-knock Warrants*, The Columbus Dispatch (October 15, 2020), <https://www.dispatch.com/story/news/crime/2020/10/15/ohio-ag-and-prosecutors-propose-new-limits-no-knock-warrants/3665321001/>. Other provisions limit who may authorize a no-knock warrant, such as HB 1272 in Texas, which specifically prevents justices of the peace, municipal court judges and county court judges from approving such warrants. Christian Aleman, *Texas Bill Seeks To Limit Use Of No-knock Warrants, Ensure Body Camera Use*, KCEN (August 21, 2021), <https://www.kcentv.com/article/news/local/texas-bill-limit-use-no-knock-warrants/500-2d4b9673-5e4e-4e32-a640-2fb9afb32068>. And several provisions require officers to utilize body cameras during no-knock raids. *Id.* In short, these measures seek to prevent the use of no-knock warrants where they are unnecessary.

No-Knock Warrants In New Jersey

In New Jersey, police departments and SWAT units are authorized to use no-knock warrants under certain circumstances, delineated in the pertinent precedents. Thus, the Supreme Court of New Jersey has provided the following principles governing the issuance of no-knock warrants: “(1) to justify a no-knock warrant provision, a police officer must have a reasonable, particularized suspicion that a no-knock entry is required to prevent the destruction of evidence, to protect the officer's safety, or to effectuate the arrest or seizure of evidence; (2)

the police officer must articulate the reasons for that suspicion, which may base upon the “totality of the circumstances,” and (3) although the officer's assessment of the circumstances may be based on his or her experience and knowledge, the officer must articulate a minimal level of objective justification to support the no-knock entry, meaning it may not be based on a mere hunch.” *State v. Johnson*, 168 N.J. 608, 619 (2001).

On December 7, 2021, then Acting New Jersey Attorney General Andrew Buck issued a directive regulating the use of no-knock warrants. *See* Attorney General Law Enforcement Directive #2021-12 (Dec. 7, 2021), https://www.nj.gov/oag/dcj/agguide/directives/ag-Directive-2021-12_No-Knock-Warrants.pdf. (hereinafter “the Directive” or “No-Knock Directive”). Among other provisions, the Directive narrows the circumstances in which no-knock warrants may be obtained in New Jersey. Now, a no-knock warrant may be obtained only if “knocking and announcing will create a reasonable and particularized concern for officer safety or the safety of another person....” *Id.* at 2. The Directive sets new requirements for obtaining no-knock warrants, including by requiring a County Prosecutor him or herself, or the Director of the Division of Criminal Justice (or their designees), approve all no-knock warrants, places limitations on when and how no-knock warrants can be executed, and requires County Prosecutors to maintain data on the amount of no-knock warrants sought and approved. *See generally id.*

That said, because the Directive continues to utilize the reasonable suspicion standard, “the showing required to justify an unannounced entry, as before the Directive, “is not high [.]” *State v. Jones*, 179 N.J. 377, 399 (2004) (*citing Johnson*, 168 N.J. at 624) (citations omitted). That is, in addressing the “no-knock” provision, the Supreme Court has stated that several factors alone, or in combination, may be sufficient to justify a “no-knock” search warrant. *Jones*, 179 N.J. at 400. They include factors as simple as whether a suspect has a criminal history of violence, an informant’s tip that the suspect has weapons or drugs at the place to be searched, and the layout of an apartment where one or more occupants have a violent criminal past. *Id.* Indeed, the Court has held that “some of those factors may by themselves be of sufficient concern to raise a reasonable suspicion of danger to officer safety without any evidence of a defendant's prior criminal acts.” *Id.*

Applying this relatively loose standard, New Jersey courts have upheld the use of no-knock warrants in very questionable circumstances. For example, in *Jones*, the Court upheld a no-knock warrant that relied upon a confidential informant indicating that drug-related activities were ongoing within a residence,

despite the fact that the homeowner had never been convicted of a crime and had only been arrested once, seven years before the search. *Jones*, 179 N.J. at 404. The Court stated that the prior arrest gave “rise to a reasonable suspicion that knocking and announcing the police presence in the circumstances presented would increase the risk to officer safety.” *Id.* at 401. Similarly, in *State v. Sanchez*, the Supreme Court upheld the use of a no-knock warrant where law enforcement relied upon a nine-year old arrest for assault and possession of a weapon, a twelve-year old arrest for possession of narcotics, and a 32-year old arrest for shoplifting, in part because a “search based upon a warrant is presumed to be valid once the State establishes that the search warrant was issued in accordance with the procedures prescribed by the rules governing search warrants[.]” *State v. Sanchez*, 179 N.J. 409, 412 (2004) (citing *State v. Valencia*, 93 N.J. 126, 133, (1983)). Finally, New Jersey courts, relying upon the likelihood of destruction of evidence routinely uphold no-knock warrants in cases involving drugs. *See id.*; *see also State v. Robinson*, 200 N.J. 1, 18 (2009); *State v. Maples*, 2010 WL 5426852, at *3 (N.J. Super. Ct. App. Div. Oct. 20, 2010); *State v. Calderon*, 2015 WL 1034237, at *3 (N.J. Super. Ct. App. Div. Mar. 11, 2015); *State v. Wanreze Bradford Green*, 2011 WL 1631231, at *4 (N.J. Super. Ct. App. Div. May 2, 2011). And while, as a result of the Attorney General’s recent directive, the possible destruction of evidence is no longer a valid justification for obtaining a no-knock warrant – at least so long as the Directive remains in effect – it demonstrates just how loosely the Court interprets the reasonable suspicion standard, which the Directive does not alter.

Potential Legislative Measures

While no-knock warrants are legal in New Jersey, the degree of their use is unknown. Most states, including up until very recently New Jersey, do not track the use of no-knock warrants. Steve Jonoski, *NJ Doesn’t Track No-Knock Warrants, Even As State Legislators Look To Ban Them*, North Jersey.com (July 6, 2020), <https://www.northjersey.com/story/news/new-jersey/2020/07/06/nj-police-no-knock-warrants-ban-breonna-taylor/3265468001/>. As noted, the Attorney General’s directive addresses this issue, mandating that County prosecutors “track on an annual basis, for each law requesting law enforcement agency, the number of warrants including no-knock provisions applied for” and authorized by courts in their respective jurisdictions, as well as any no-knock entries justified by exigent circumstances. No-Knock Directive at 5. This data will allow legislatures and citizens to hold police departments accountable for potential wrongdoing, as is particularly important given data that at least seems to indicate that, on a national basis, the use of no-knock warrants disproportionately impacts minority

citizens. Thus, in 2014 the American Civil Liberties Union (ACLU) published a study on the use of no-knock warrants in 20 local law enforcement agencies from 2011-2012. ACLU (June 2014), *War Comes Home*, https://www.aclu.org/sites/default/files/field_document/jus14-warcomeshome-text-rel1.pdf. The ACLU found that 79% of raids were conducted to search homes, 60% of those were for drug offenses. The ACLU's study highlights the lack of demographic information, particularly with regard to race, with respect to the use of no-knock warrants. *Id.* at 5. However, some race data was available with regard to search warrants in general and it showed that 42% of those targeted by search warrants were Black, while 12% were Latino. *Id.* at 36. And 61% of all the people impacted by raids in drug cases were minorities. *Id.* While the ACLU's study did not include data from New Jersey it did include data from Arkansas, Connecticut, Georgia, Mississippi, North Carolina, Pennsylvania, Texas, Utah, Washington and West Virginia.

Prior to the COVID-19 pandemic, New Jersey did not collect or maintain data on no-knock warrants. However, in August 2020, as a resultant of Courts' inability to convene in person, the Administrative Office of the Courts launched an application that allowed officers to apply for search warrants electronically. That application maintains data on the type of warrants approved by the courts—including no-knock warrants—but does not capture racial data. Data from the application shows that from August 2020 to April 27, 2021, 7,012 warrants were approved, of which, 2,361 were knock-required warrants, 4,223 warrants were issued in situations where knocking was not applicable (*e.g.*, gym bags, suitcases or purses). And, most significantly, of the 7,012 approved warrants, 428, or 6%, were for no-knock warrants; these facts provide powerful evidence countering the statements by various prosecutor's offices throughout New Jersey, which indicated that no-knock warrants were hardly ever sought. Jonoski, *supra*. By mandating that this data be maintained, the Attorney General's directive will assure that at least the number of no-knock warrants authorized in New Jersey is documented and available to policy makers, regulators and the public. The Directive falls short, however, by declining to mandate that, the basis for seeking no-knock warrants and, most importantly, the racial and ethnic demographics of impacted citizens be recorded and maintained as well.

On June 18, 2020 Assemblyman Benjie E. Wimberly and Assemblywoman Verlina Reynolds-Jackson introduced legislation to prohibit the issuance and execution of no-knock warrants executed at residences. Assembly Bill No. 4286, 219 Legislature (June 2020) https://www.njleg.state.nj.us/2020/Bills/A4500/4286_I1.HTM. Under that bill, prior to executing an arrest warrant at a residence or warrant authorizing a

search and seizure at a residence, a law enforcement officer is required to knock on the door of the residence; clearly and verbally announce the officer's identity and reason for being there; and, absent exigent circumstances, wait a reasonable amount of time but not less than 30 seconds for occupants to answer the door, whichever is greater, before entering the premises.

Assembly Bill No. 4286 would ban the use of no-knock warrants entirely, at least with respect to residence. By contrast, the Attorney General directive “generally prohibits the use of no-knock warrants,” while still allowing them, as mentioned above, if knocking and announcing will create a reasonable and particularized concern for officer safety or the safety of another person. *See* No-Knock Directive at 2. The Directive does, however, require “a trained tactical team” to execute all no-knock warrants. *Id.* In addition, the County Prosecutor, Director of the Division of Criminal Justice, or their senior legal staff designee must approve any warrant that includes a no-knock provision and every execution of a no-knock warrant must undergo subsequent review by the approving County Prosecutor's Office. *Id.* Moreover, the Directive requires search warrants to be executed between 5:00 a.m. and 10:00 p.m., notes that flash bang devices, which as explained above can cause serious harm, should be used sparingly, and requires that the operations plan created prior to the execution of the warrant “take reasonable steps to identify the occupants of the target premises, including children and other individuals with known vulnerabilities.” *Id.* at 2-3. These are certainly beneficial changes, but as set forth below, the Policing Subcommittee believes that they fail to fully address the problem, or to do so in the more permanent way – not one that could easily be undone by some future Attorney General – that legislation would afford.

That said, to the extent that Assembly Bill No. 4286 would ban the use of no-knock warrants entirely; while the Policing Committee understands and agrees with the sentiment underlying that blanket prohibition, it also recognizes that there are rare—and they should be rare—circumstances in which officers may need to utilize no-knock warrants. In this regard, while the Committee commends the Attorney General for taking action, particularly with respect to the limitation placed on flash bang devices and the requirement to maintain at least some data on no-knock warrants, the Committee believes that there is more to be done. Specifically, while the Directive seems consistent with the Committee's May 2021 recommendation to limit the use of no-knock warrants to circumstances where officers believe there is a risk to officer safety, it retains the lenient “reasonable suspicion” standard. Further, while the Directive requires that the County Prosecutor or their designee approve all no-knock warrants, it fails, as the Committee recommends, to designate a specific judge to approve no-knock

warrants, a provision which we believed necessary to prevent judge-shopping and to vest decision-making in a judicial officer with expertise as to this particularly intrusive kind of warrant. Finally, the Directive says nothing about addressing the disproportionate racial impact of no-knock warrants through bias training or through maintaining racial demographic data of the individuals impacted by no-knock warrants. Accordingly, the Policing Committee, while still supporting Bill No. 4286, would recommend amendments that would:

- Limit the use of no-knock warrants to circumstances where officers have “probable cause,” as opposed to the current “reasonable suspicion,”⁵ to believe there is substantial risk of death or serious bodily injury to law enforcement or others in the vicinity;
- Require each county to designate a single judge—perhaps the Assignment Judge or the Presiding Criminal Judge, but alternatively, a Judge expert (or trained) in the pertinent standards for no-knock warrants—to decide applications for such warrants. This will assure uniformity of decision-making and would prevent “Judge-shopping,” which is an established problem in these cases;⁶
- Require training for law enforcement, prosecutors and judges, including pertinent implicit bias training, with regard to the obtaining and execution of no-knock warrants; and
- Require that data be kept with regard to the use of no-knock warrants, including information regarding the crimes for which they are utilized and the race, ethnicity and other demographics of affected persons.

⁵ “Reasonable suspicion is a less demanding standard than probable cause not only in the sense that reasonable suspicion can be established with information that is different in quantity or content than that required to establish probable cause, but also in the sense that reasonable suspicion can arise from information that is less reliable than that required to show probable cause.” *State v. Stovall*, 170 N.J. 346, 363 (2002) (citing *Alabama v. White*, 496 U.S. 325, 330, (1990)).

⁶ See Dave Savini, Michele Youngerman, Samah Assad, and Christopher Hacker, *Chicago Police Raids Rarely Turn Up Drugs. So Why Do Judges Keep Signing Off on Bad Warrants?*, CBS Chicago (November 17, 2020), <https://chicago.cbslocal.com/2020/11/17/chicago-police-raids-rarely-turn-up-drugs-so-why-do-judges-keep-signing-off-on-bad-search-warrants/>; Brendan J. Lyons, *Search Warrants: Shopped, Signed and Sealed*, Times Union (May 12, 2013), <https://www.timesunion.com/local/article/Search-warrants-Shopped-signed-and-sealed-4508559.php>; Ted Shouse, *Opinion: Breonna’s Law A Start, But Jefferson Circuit Court Should Change Warrant Process*, Louisville Courier Journal (June 22, 2020), <https://www.courier-journal.com/story/opinion/2020/06/22/breonnas-law-louisville-courts-must-change-search-warrant-process/3194741001/>.

MUNICIPAL COURTS COMMITTEE REPORT & ACTION PLAN

The Municipal Court Committee, comprised of retired judges, lawyers, community activists and public officials is tasked with a review of racism within New Jersey's true "people's court."

The importance of the municipal court cannot be overstated. Despite dealing with so-called minor offenses, the municipal court is the face of the judiciary – handling six million cases per year in over 570 courts throughout all 21 counties. For most citizens, the only exposure to the courts and judges is in these local municipal courts.

With so many courts, cases and citizens – the Committee sought to explore possible racial bias. This is not a novel pursuit.

In 2015 – after the racial tensions in Ferguson, Missouri – the United States Department of Justice – Civil Rights Division – discovered and highlighted the problems of racial bias in that city's municipal courts. Coupled with the practices of the Ferguson police force, the report found that the municipal court practices likewise cause disproportionate harm to the African-American community.

New Jersey took quick action. Our Supreme Court, in response to the DOJ/Ferguson report, formed a working group charged with conducting a comprehensive re-evaluation of the administration of justice in the state's municipal courts. Its July 2019 report made a number of recommendations, among them a proposal to de-couple sentencing practices with the municipalities' need for revenue.

The Municipal Court -Committee believes it can build on those Supreme Court recommendations. The Commission must ask these questions:

- Does racial inequality rear its ugly head in our Municipal Courts?
- If so, how is it manifested?
- What steps can correct these inequalities?
- Is the Ferguson experience present here in New Jersey?

The Committee has identified two areas for review: policing and court administration. Pertinent questions for review include:

- Who are the defendants in municipal court?

- Do they reflect the community's racial composition or are they disproportionately citizens of color?
- Are non-resident defendants more likely to be minorities, especially if the town is predominately white?
- Who comprises the municipal court bench? Its administrative staff? Are minorities represented in both categories?

A 2015 ACLU report found that in one major New Jersey city, Black individuals were nine times more likely to be arrested and prosecuted for low-level crimes, including marijuana-related crimes, than white individuals.

The Committee strongly believes that the Commission's role goes beyond data collection, spirited debate and recommendations. The Commission's role includes action, specifically positive steps to reverse systemic racism that pervades our justice system and, in particular, our municipal courts.

One such opportunity presents itself now with the passage of legislation legalizing marijuana. People of color have long been the target of these prosecutions. Now, these marijuana offenders can have those convictions reversed.

Beyond reversal, these convictions must be removed from a person's permanent record. The Commission's role can be one of education and implementation: to assist in getting the word out on how to get marijuana conviction records expunged and to ensure that the courts properly remove those conviction records.

In Burlington County, a community of concerned stakeholders - police, lawyers, prosecutors, community leaders, faith-based organizations – created a program through the Burlington County Bar Association to both promote and provide expungements, (especially for low-level crimes). Expungement clinics were created. Resources were marshalled. Prosecutors provided criminal histories for review. Lawyers helped individuals review their records and file the paperwork. Convenient sites were set up to facilitate the expungement applications.

This collaborative effort culminated with a very successful expungement clinic held October 29, 2021. Participants included Commission co-chair Carolyn V. Chang, who was among the organizers and volunteers for the program. Nearly 20 attorneys met with more than 265 clients that day at the Tabernacle Baptist Church in Burlington City and the Friendship AME Church in Browns Mills.

Organizers attributed the program's success to a variety of factors including:

- The involvement of faith-based organizations who helped get the word out and provided a neutral, non-governmental venue for the clinic that also had a robust technology infrastructure which made electronic filing for expungements feasible;
- The cooperation of the local city police chief, who helped with logistics and informing people in town who he knew were struggling to secure jobs due to criminal records;
- Training and assistance from the drug court director in Burlington County, who has extensive experience with expungement, plus training by Legal Services
- An electronic platform connected to E-courts to allow efficient filing;
- Recruitment of volunteer attorneys by the Burlington County Bar, Affinity Bars, the Office of Public Defender, and more;

A more detailed description of Burlington County's program from the Burlington County Bar Association's monthly magazine, *The Straight Word*, is in Appendix B of this report.

The Commission's Municipal Court -Committee proposes to learn from the Burlington experience and develop a protocol that can be used throughout the State and provided county and affinity bar associations. The Committee's future work should involve the creation of a clear, step-by-step resource guide to assist bar associations in planning for similar expungement programs.

SPECIAL STANDING COMMITTEE

The Commission requests that the Board of Trustees establish and NJSBA “Special Committee on Racial Equity In the Law” as defined under Article X and XI of the NJSBA Bylaws. The reasons for the Commission’s request follow.

A platform to facilitate collaborative discussion concerning racism, equity, equality and social justice issues in the context of civil and criminal jurisprudence presently does not exist within the NJSBA. The NJSBA is frequently called upon to bring together leaders from different areas of the State to address myriad legal issues, including the recently convened Working Group on Jury Selection. In other aspects of the NJSBA, the Board has created Special Committees on various areas of substantive law. The Special Committees were formed to meet the specific needs of the Association and its members. The need to address racial and social justice issues in the NJSBA exists.

Articles X and XI of the Bylaws address the authority of the Board of Trustees to establish Special Committees. Under, Article X, Section 1, the Board of Trustees “may establish Divisions or Sections upon petition of any group of members or Special Committee having a field of interest or concentration in an area of substantive or procedural law or an area of concern to the Association not already represented by an existing Section or Division. Such petition shall be consistent with procedures established in the NJSBA Policy Manual.” Under Article XI, Section 3, the Board of Trustees may establish such Special Committees as will enhance the functioning of the Association. Such Special Committees shall remain in place unless discontinued by the Board of Trustees.

The Board of Trustees has established a total of 35 Special Committees. The majority of the Special Committees are focused on specific, and sometimes, specialized areas of the law. However, per the Bylaws, a Special Committee can be formed in an area of concern to the Association not already represented by an existing Second or Division. Such is the case here. A review of existing entities (*i.e.*, Sections, Division and Committees) reveals a significant gap in addressing racial and social justice issues. Historically, racial and social justice issues in which members and non-members come together to talk about, debate and develop solutions to racial injustice does not exist. That is not a critique of past or present leadership, but a reflection that having tough and sometimes uncomfortable discussions about racial and social justice issues are difficult. Recent events demonstrate that such conversations are a necessary byproduct to the goals of achieving racial equity and equality.

In preparing this request, the Commission is certainly mindful of the Minorities in the Profession (MIPS) Section and the Diversity Committee. Let's look at the mission of each.

The mission of MIPS is stated as:

To promote the objectives of the New Jersey State Bar Association and to voice the interests and concerns of minority attorneys. The Section will hold forums and institutes for discussion of problems and questions relating to such interests. This Section will provide for the publication and dissemination of information and knowledge regarding such interests and any related field of law. The Section will consider legislation and will promote remedial law and procedures pertaining thereto. The Section will also encourage minorities to join the legal profession and the New Jersey State Bar Association.

The mission of Diversity Committee is:

Promotes participation in bar-related activities by those lawyers and lawyer groups who have not previously participated significantly in such activities, including minorities, women, younger lawyers, government lawyers, in-house counsel, physically challenged and other similarly situated lawyers or lawyer groups.

The Diversity Committee will continue to nurture diversity through: relations with the specialty bar associations and all Association sections and committees; organizing educational and social programming; monitoring and fostering inclusiveness in the continuing activities, programs and projects of the Association and its related organizations, such as the New Jersey State Bar Foundation, and the like.

The common theme running through the missions of MIPS and the Diversity Committee are interests of lawyers. MIPS was created to address the interests and concerns of minority attorneys. For its mission, the Diversity Committee promotes participation in bar-related activities by those lawyers and lawyer groups who have not previously participated significantly in such activities. With the core of both MIPS and the Diversity Committee being focused on attorneys, either from a membership recruitment point of view or promotion of activities to fulfill their respective missions, a gap exists in the area of racial justice that spans both non-lawyers (members of the public), lawyers, members of the judiciary, politicians, and the legislative branch. The NJSBA's role in examining racial justice and the challenges of the impact of racism on law and justice in New Jersey was not addressed fully until the Commission was created.

To a person, anyone who had the opportunity to participate in the work of the Commission engaged in direct conversations about the experiences of Black and Brown people that was unique in the NJSBA. The inequities of the incarceration rate of Black and Brown people, disparities in the municipal court system and in policing which result in disparate treatment of Black and Brown people, and the need for educating members of the public and lawyers about racial equality were all discussed. At times, members were blunt, direct and did not hold back regarding their personal experiences or the experiences of clients, friends and colleagues. The imbalance in the incarceration rates of Black and Brown people, and the treatment of them in the criminal justice system, as identified by the Policing Committee, highlighted the need for continued debate and discussion in areas that are not limited to the interest of lawyers. Rather, their debate and discussion were much broader and are outside of the missions of MIPS and the Diversity Committee.

Add to the foregoing, elevating the Commission to a Special Committee sends an important signal that racial justice and the need to meet the challenges of racism in the law and justice system do not need to be addressed only in the heat of the moment. The leadership of the NJSBA has never shied from difficult issues, has confronted issues that were not popular, and has made sure that important issues to our professional and the public at large were discussed when necessary. The issue of racial justice cannot be fairly addressed by a one-size fits all approach – disagreements, different perspectives, and collaboration from all leaders and stakeholders are important components of any meaningful review. Because no other forum exists in the NJSBA to have this type of discourse, the

Commission recommends that the Board of Trustees create a Special Committee consistent with the mission of the Commission, namely:

The NJSBA Special Committee on Racial Equity in the Law will examine the impact of racial inequalities and racism within the practice of law and the administration of justice in New Jersey. The Committee will address institutional anti-Blackness within the State's legal establishments and its impact on the practice of law. Based on its findings, the Committee will make recommendations to the NJSBA Board of Trustees to advance specific strategies and policies directed at improving fairness in the administration of justice; improving the practice of law for all practitioners; educating lawyers and Bar leaders about the impact of racism on law and justice; and preserving the independence and integrity of the judicial system. The work of the Committee is crucial to reach racial equity in the legal system and in the practice of law for all, and the Committee's membership should be inclusive of representatives from throughout the state's legal community, including the affinity bar associations.

CONCLUSION

The Commission studied select areas of systemic racism and equalities in New Jersey's legal system and in the practice of law. In some areas, the Commission determined that the required "fix", such as providing lawyers and members of the public with access to informative materials and writings regarding the inequalities associated with our justice system were within reach. In other areas, such as policing, municipal courts, and criminal justice the Commission concluded that more work is required to develop realistic solutions. Over the past two years, the Commission recognizes that there remains in New Jersey a crisis of equal justice. Examples of subconscious biases or blatant racism continue to plaque parts of the judicial system that are fair and balanced. All too frequently, the members the Commission observed reminder that the comfort of remaining silent in the face of institutional racial inequalities must fade. Achieving true equality requires all lawyers and leaders to have tough

conversations about racism and to commit themselves to make a change. Thus, the Commission's recommendations in this report are only the beginning step in a long journey. The Commission urges the NJSBA Board of Trustees to accept this report, distribute the report within the committees and sections of the NJSBA, solicit input of additional stakeholders, and develop action plans for their implementation.

ACKNOWLEDGEMENTS

The Commission thanks NJSBA Immediate Past President **Kimberly A. Yonta** for recognizing the importance of anti-Black racism in New Jersey's legal system and in the practice of law and for forming the Commission on Racial Justice and Equity in the Law to address long-standing concerns directed to racial justice and equality in New Jersey.

The Commission thanks NJSBA President **Domenick Carmagnola** for recognizing the continued importance of the work of the Commission and the valued guidance he provided to the Commission throughout his term as President.

The Commission also wishes to recognize the tremendous work of **Paula Saha** for her skilled insights and commitment to the goals of the Commission. Paula's work behind the scenes and navigation through the intricacies of the NJSBA were invaluable.

The Commission further wishes to recognize **Angela C. Scheck** for her exceptional guidance and institutional knowledge of the NJSBA, which helped the Commission select the appropriate path forward to work through its goals.

APPENDICES

Appendix A: PROPOSED RESOURCES/SPEAKERS/CLES

Books (* denotes authors who are also possible speakers)

- *A Call to Conscience: The Landmark Speeches of Dr. Martin Luther King, Jr.*
- *An Indigenous Peoples History of the United States* by Dr. Roxanne Dunbar Ortiz*
- *A Terrible Thing to Waste* by Harriet Washington*
- *A Testament of Hope* by James Washington
- *American Exceptionalism and American Innocence* by Roberto Sirvent and Danny Haiphong
- *American Justice on Trial: People vs. Newton* by Lise Pearlman
- *An African American and Latinx History of the United States* by Paul Ortiz*
- *Barracoon* by Zora Neale Hurston
- *Black is the Color of My TV Tube* by Gil Noble
- *Brainwashed: Challenging the Myth of Black Inferiority* by Tom Burrell
- *Caste: The Origins of our Discontent* by Isabel Wilkerson*
- *Common Sense* by Thomas Paine
- *Cutting School: The Privatization, Segregation, and the End of Public Education* by Noliwe M. Rooks*
- *Four Hundred Souls: A Community History of African America, 1619-2019* edited by Ibram X. Kendi and Keisha N. Blain
- *Harvest of Empire: A History of Latinos in America* by Juan Gonzalez
- *Hands on Freedom Plow: Personal Accounts by Women in SNCC* edited by Holsaert, Noonan, Richardson, Robinson, Young & Zellner
- *How to be Antiracist* by Ibram X. Kendi
- *Indigenous Peoples' History of the United States* by Roxanne Dunbar-Ortiz*
- *J. is for Junk Economic: A Guide to Reality in an Age of Deception* by Michael Hudson
- *The Jungle* by Upton Sinclair
- *Harvest of Empire: A History of Latinos in America* by Juan Gonzalez. Esq.*
- *Killing the Host: How the Financial Parasites and Debt Destroy the Global Economy* by Michael Hudson

- *King of the Cats: The Life and Times of Adam Clayton Powell, Jr.* by Will Haygood
- *Lies My Teacher Told Me* by James W. Loewen
- *Looking for Lorraine, The Radiant and Radical Life of Lorraine Hansberry* by Imani Perry
- *News for all the People: The Epic Story of Race and the American Media* by Juan González
- *No Small Change: Pension Funds and Corporate Engagement* by Tessa Hebb
- *Open Veins of Latin America, Five Centuries of the Pillage of a Continent* by Eduardo Galeano
- *Overthrow* by Stephen Kinzer
- *Pagans in the Promise Land* by Steven T. Newcomb
- *Prejudicial, Black America and the Presidents* by Margaret Kimberley
- *Race, Law, and American Society: 1607-Present* by Gloria Brown-Marshall*
- *Sacco and Vanzetti: The Men, the Murders, and the Judgment of Mankind* by Bruce Watson
- *She took Justice* by Gloria Brown-Marshall
- *Solitary, My Story of Transformation and Hope* by Alfred Woodstock
- *Stamped From the Beginning* by Ibram X. Kendi*
- *Stockley A Life* by Peniel F. Joseph
- *The Autobiography of Malcom X* by Alex Haley
- *The Color of Law* by Richard Rothstein*
- *The Condemnation of Blackness, Race, Crime, and the Making of Modern Urban America* by Khalil Gibran Muhammad*
- *The Crisis of the Negro Intellectual* by Harold Cruise
- *The Debt: What America Owes to Blacks* by Randell Robinson
- *The New Jim Crow, In the Age of Colorblindness* by Michelle Alexander*
- *The Philosophy & Opinions of Marcus Garvey* compiled by Amy Jacques Garvey
- *The Strange Career of Jim Crow* by C. Vann Woodward
- *The Trials of Lenny Bruce: The Fall and Rise of an American Icon* by Ronald K.L. Collins & David M. Skover
- *The Warmth of Other Suns* by Isabel Wilkerson
- *The Young Lords the Radical History* by Johanna Fernandez

- *To Protect and Serve* by Norm Stamper*
- *To Shoot Hard Labour: The Life and Times of Samuel Smith and Antiguan Workingman 1877-1982* by Keithlyn B. Smith
- *We Are All Criminals* by Emily Baxter, Esq.*
- *White Like Me* by Tim Wise*
- *Women Race & Class* by Angela Y. Davis
- *Wretched of the Earth* by Frantz Fanon
- *Why We Can't Wait* by Martin Luther King Jr.
- *The Whiteness of Wealth* by Dorothy A. Brown
- *Post Traumatic Slave Syndrome* by Joy DeGruy

Documentaries

- *Cointel Pro 101*
- *The Doctrine of Discovery*
- *Heist*
- *In Debt We Trust*
- *Inside Job*
- *The Mean World Syndrome*
- *Merchants of Doubt*
- *Norman Rockwell's World: An American Dream*
- *RACE: The Power of an Illusion*
- *13th*
- *Cuba, an African Odyssey*
- *Disappearing Voices, The Decline of Black Radio*
- *1804: The Hidden History of Haiti*
- *The Cotton Pickin Truth: Still on the Plantation*

Online Resources/Reports/Articles

- Want to Rebuild Public Trust? Focus on Civic Education | RAND
<https://www.rand.org/blog/articles/2020/12/want-to-rebuild-public-trust-focus-on-civic-education.html>
- Peggy McIntosh, Associate Director of the Wesleyan College Center for Research on Women: White Privilege: Unpacking the Invisible Knapsack.
https://psychology.umbc.edu/files/2016/10/White-Privilege_McIntosh-1989.pdf

- U.K. paid off debts to slave-owning families in 2015:
<https://www.usatoday.com/story/news/factcheck/2020/06/30/fact-check-u-k-paid-off-debts-slave-owning-families-2015/3283908001>;
- When Slaveowners Got Reparations: <https://nyti.ms/2DgInXo>;
- When the Irish Became White: Immigrants in Mid-19th Century US Generation Emigration:
<https://www.irishtimes.com/blogs/generationemigration/2013/02/12/when-the-irish-became-white-immigrants-in-mid-19th-century-us/>
- Lynching in America: Confronting the Legacy of Racial Terror:
<https://ejj.org/reports/lynching-in-america/>
- *What's in Your Hands* speech by Adam Clayton Powell:
https://www.youtube.com/watch?v=flkpHpkZ_Udw
- Arbitrary Justice: The Power of the American Prosecutor -Professor Angela J. Davis, Esq. (speaker), <http://www.arbitraryjustice.com> or <https://lawanddisorder.org>
- Martin Luther King Speaks to the National Association of Radio Announcers: https://www.youtube.com/watch?v=_wxBCl1RDwA
- Unequal Opportunity Race:
https://www.washingtonpost.com/video/national/the-unequal-opportunity-race/2016/02/11/3d60a01a-d0d6-11e5-90d3-34c2c42653ac_video.html
- Dennis Febo: The Ism of Race:
https://www.ted.com/talks/dennis_febo_the_ism_of_race

Journalism/Press

- C-Span.org
- DemocracyNow.org
- lawanddisorder.org
- Law of the Land, wbai.org
- Pacifica Radio Archives
- Project Censored

Organizations

- *People's Law Firm (Chicago, IL)*
- *Brennan Center for Justice (New York University Law School)*
- *Bronx Defenders (New York City)*
- *Center for Constitutional Law (New York)*
- *Equal Justice Initiative (Montgomery, AL)*

- National Association of Criminal Defense Attorneys
- Advancement Project (<https://advancementproject.org/>)

Movies

- *Amistad*
- *Black Legion*
- *Ghosts of Mississippi*
- *Loving*
- *Marshall*
- *Malcom X*
- *Mr. Smith Goes to Washington*
- *Mr. Deeds Goes to Town*
- *Network*
- *The Hurricane*

ABA Resources

Syllabus: 21-Day Racial Equity Habit-Building Challenge

https://www.americanbar.org/groups/labor_law/membership/equal_opportunity/

Appendix B: “Day of Service Expungement Clinic”

reprinted from The Straight Word, a publication of the Burlington County Bar Association, Vol. 55, No. 11, December 2021.



Carolyn V. Chang is one tough cookie. The longtime county and state bar activist is known for her steely resolve in court. But after helping an indigent client file an expungement petition recently, she nearly melted.

Chang described her involvement in the Burlington County Bar Association's Oct. 29 expungement clinic as "one of the most emotional social justice experiences" of her long legal career.

"I will never forget how one client started to cry after I uploaded her application to eCourts. She told me, 'You have no idea how much this means to me. Perhaps now I will not have to work three minimum-wage jobs to feed my kids.'"

The masked Chang was so moved by the remark that, casting aside COVID restrictions, she squeezed the client's hand and gave her what she described as a "modified hug of hope for her future and the future of her children."

Chang was joined by nearly 20 other lawyers as BCBA conducted its seventh annual day of service at the Tabernacle Baptist Church in Burlington City and Friendship A.M.E. Church in Browns Mills. Among the participants were nearly a dozen public defenders, including John J. Keesler, head of the Burlington County office, and BCBA members Brenda R. Maneri and Ruth E. Hunter.

Burlington County Prosecutor Scott A. Coffina also assisted, along with Assistant Prosecutors Alexis R. Agre and La Chia Bradshaw and other volunteers from his office. BCBA Executive Director Robyn Goldenberg provided critical logistical support.

The lawyers met with over 265 clients. Most of the clients had their expungement petitions filed that day or were informed that they were not eligible. Those who were not reached during the eight-hour session — some 40 or 50, according to event organizers — will have their cases reviewed by the state Office of the Public Defender, which has promised to file expungement petitions for eligible candidates.

"Research has shown the great benefits of expungements. People who receive them are less likely to commit new crimes and their wages increase, on average, by 25 percent," said Stephen P. Hunter, drug court director for OPD and one of the principal organizers of the Oct. 29 clinic.

Hunter noted that many people, although eligible, do not apply for expungements because they cannot afford to hire lawyers to file the applications. "The number of people who attended the one-day Burlington clinic, 250-plus, shows that there is a great need for free legal assistance to help people obtain their well-deserved expungements," he said.

"I am pleased that the public defender's office was able to partner with the bar association, the Burlington County Prosecutor's Office and others to make this free expungement clinic a reality," Hunter added. "My hope is that the success of the Burlington clinic in helping to address that need can be replicated in other counties throughout the state."

Burlington County Prosecutor Scott Coffina shared Hunter's enthusiasm. "We were excited to be a part of this clinic," he said. "Those who are entitled to expungement of their criminal records should get them as soon as possible, so they can get the benefits of a clean slate, including expanded opportunities for jobs, education and housing."

Burlington City Police Chief John Fine was one of the biggest proponents of the clinic. In conversations with his community, he continually heard that people were struggling to secure housing and jobs because of their criminal records. He knew something had to change, so when the clinic date was confirmed, Fine walked the streets of his town and rang doorbells to make sure residents were aware of the event and attended. He also spent almost the entire day at the Tabernacle Baptist Church, assisting with logistics.

After reporting to one of the two locations, clients were paired with a lawyer who determined whether they were statutorily eligible for an expungement. (The participating lawyers all received training before the clinic from Hunter and Akil S. Roper and Rosalyn Scriven of Legal Services of New Jersey.) If the client

was eligible, the lawyer initiated the process by filing a petition on the state judiciary's electronic platform.

Once a petition is filed, it is reviewed by the county prosecutor and the court. If the expungement is granted, courts and law enforcement agencies throughout the state are served with an order directing them to remove the person's criminal history from their records.

"For many people, an expungement can be a life-altering event," said Kevin Walker, a public defender and former bar president who initiated the day of service in 2015. "It allows them to turn the page, to move on with their lives, unencumbered by a criminal conviction."

The county bar association collaborated with Pastor Cory Jones of the Tabernacle Baptist Church and Rev. Samuel Hayes and his wife, Donna Hayes, of Friendship A.M.E. Church. Planning for the event began last spring under the direction of then-BCBA President (now Judge) Reema Scaramella.

"Our communities are filled with people forced to suffer the perpetual repercussions of actions committed in their youth or mistakes made in their adult lives," said Rev. Jones. "Expungements provide forgiveness, grace and a second chance to those who just want the opportunity to excel in life. As a church that believes in God's grace," he added, "how could we not support this cause?"

Rev. Hayes echoed the sentiment. "In the search to fulfill our humanistic purpose, we must embrace activism that speaks with power to the people 'for such a time as this,'" he said. "We applaud the leadership in the Burlington County justice system as they endeavor to labor in the fields of forgiveness and grace, exalting the downtrodden in society."

Chang, past president of the Association of Black Women Lawyers of New Jersey and co-chair of the state bar's Commission on Racial Equity in the Law, was instrumental in mustering the necessary resources. With her assistance, BCBA enlisted the assistance or sponsorship of the Burlington City police, The Links, Inc. (Rancocas Valley chapter), Tracey Syphax of the Block to the Boardroom, LLC., the ABWL, the Garden State Bar Association and Trulieve.

**Appendix C: New Jersey Criminal Sentencing and Disposition Commission
2022 Report**



New Jersey Criminal Sentencing & Disposition Commission

2022 Report

COMMISSION MEMBERS

CHAIR

**Chief Justice Deborah T. Poritz
(Ret.)**

Governor's Appointee

VICE CHAIR

Donald A. DiGioia

Senate Minority Leader's
Appointee

Jiles Ship

Governor's Appointee

Senator Sandra B. Cunningham

Senate President's Appointee

James Nolan

Assembly Speaker's Appointee

Aidan P. O'Connor

Assembly Minority Leader's Appointee

Hon. Edwin Stern (Ret.)

Chief Justice, Designee

Andrew Bruck

Acting Attorney General

Joseph E. Krakora

Public Defender

Victoria Kuhn

Acting Commissioner, Department
of Corrections

Samuel J. Plumeri, Jr.

Chairman, State Parole Board

Francis A. Koch

County Prosecutor's Association of
New Jersey, Designee

Brian J. Neary

New Jersey State Bar Association,
Designee

Table of Contents

Executive Summary	2
Introduction: How We Got to Where We Are Now	5
Part I: Commission Update	7
A. Status of Action Areas Identified in the First Commission Report	7
B. Executive Response to Legislative Inaction: Attorney General Law Enforcement Directive No. 2021-4.....	10
C. Judicial Developments.....	11
1. <u>State v. Torres</u>	11
2. Juvenile Sentencing Cases	14
D. Research Opportunities: Past and Present	15
1. Data Collection.....	15
2. Arnold Ventures	16
3. Chapter 120 Data Project	18
Part II: Call to Action	21
Part III: Subcommittee Updates and Framework for Future Work	24
A. Subcommittee to Study Mandatory Minimum Sentences	24
1. Subcommittee Findings: NERA and Graves Act	24
2. Future Work of the Subcommittee: Charging Decisions Under NERA and the Graves Act.....	27
3. Future Work of the Subcommittee: County Jails and the Presumption Against Imprisonment.....	28
B. Subcommittee to Study Rehabilitative Release	29
C. Mandatory Fines, Assessments and Penalties.....	33
D. Office of the Public Defender Parole Project	34
Endnotes	35
Attachment: Justice Data System Assessment Team Agreement	36
Acknowledgements	37

Executive Summary

Just over two years ago, in November 2019, the Criminal Sentencing and Disposition Commission (CSDC or Commission) issued its first Report. In that Report, the CSDC members described their initial efforts to establish the Commission as a working entity able to carry out its mission. Through its enabling legislation, the Commission was given the power to call on State and local governmental agencies for assistance in accessing data on criminal justice issues, in analyzing the information obtained, and in preparing required reports. The members agreed that their statutory charge is generally broad in respect of fairness in the criminal justice system but, at the same time, more particularly focused on issues related to racial disparities and mass incarceration in the correctional setting. As we noted in 2019, New Jersey continues to rank with those states that have the worst racial disparities in the nation. During this early phase of the CSDC's work, the members heard from participants in the system (state sentencing boards, victim rights organizations, and non-profit criminal justice reform groups, among others), and was fortunate in obtaining financial assistance from Arnold Ventures for Rutgers University faculty members and graduate students who continue to collect and analyze criminal justice data for the CSDC.

In its first Report, after the CSDC reviewed that early data and considered the impact of current laws and practices on different racial and ethnic groups, the members unanimously approved nine recommendations for reform. Those

recommendations were developed and proposed by people who represented differing interests in the criminal justice system, people who compromised because everyone agreed that reform was necessary and because the proposals constituted an important first step. Plans were also made to continue the Commission's work, building on those recommendations.

Since the first Report, the COVID pandemic has changed our lives. In this 2022 Report, the Commission describes prison releases that were ordered to ameliorate the impact of the pandemic on corrections officers, inmates and, ultimately, the population interacting with these persons. In short, COVID created a public health emergency requiring inmates to be let out of prison just as the Commission was considering both the resources necessary to help prisoners adjust to life "outside" and the impact of early release on recidivism and racial disparities. One of the unanticipated consequences of the accelerated COVID releases is that they present an opportunity to study a large cohort of inmates in this challenging environment.ⁱ

But COVID has also made it difficult to mine that and other data, and our work has slowed during the period covered by the second Report. Nonetheless, because so much has been left undone in response to the first Report, and because we have a number of substantial inquiries underway, the CSDC has decided to issue this Report now, at the close of the first administration of Governor Murphy. This second Report begins with the recommendations made in

2019, those few enacted and those that will disappear when the new Legislature convenes; the Attorney General's attempt, through executive action, to implement avenues of release for certain inmates, delayed by the courts; and, the New Jersey Supreme Court cases that urge legislative/executive action in connection with the sentencing of juveniles and with concurrent/consecutive sentencing generally. The Report continues with an update on data collection and a recent new grant from Arnold Ventures that provides support for a joint venture between the Rutgers Justice Data System Assessment Team (Rutgers Team) and the Office of the Attorney General (OAG) to create a statewide information system in New Jersey. While this project is important work in progress, without legislation implementing a first step in criminal justice reform, new steps cannot follow.

On a positive note, assuming that the first set of reforms are passed, much remains to be done and the CSDC is poised to do that work. The final sections of this Report outline a "Framework for Future Work" that the Commission anticipates will result in new proposals for legislation, also designed to reduce racial disparities and bring greater justice to the justice system in our State.

This second Report was approved unanimously by the Commission's members on January 7, 2022.

Introduction: How We Got to Where We Are Now

New Jersey has experienced an unprecedented public health crisis as a result of the COVID pandemic. In direct response to rising COVID infection numbers, widespread changes to the criminal justice system have been implemented, changes that substantially affected the operations of our courts and our correctional institutions. On March 9, 2020, Governor Murphy issued Executive Order No. 103, declaring both a Public Health Emergency and State of Emergency due to the pandemic, leading to a statewide shut down order that remained in effect for two months. From March 2020 through June 2021, the Judiciary suspended most in-person court proceedings, including grand jury panels and jury trials, followed by a brief resumption of some of those proceedings between July and November 2020. It was not until June 2021 that the Judiciary began to gradually increase the number of in-court proceedings, with a return on September 7, 2021, to a 100% on-site court staff presence. Even as this Report is issued, there is uncertainty in respect of continued in-person proceedings because of the recent increase in COVID cases and the transmissibility of the Omicron variant.

Within the State's correctional institutions, cases of COVID among prisoners and staff have spread rapidly during the pandemic, resulting, as of December 28, 2021, in 53 deaths, 4,842 confirmed cumulative cases among inmates, and 3,786 cases among staff.ⁱⁱ This institutional crisis has led to expansive Executive,

Legislative and Judicial action aimed at decreasing populations in the County jails and State prisons.

On March 23, 2020, the New Jersey Supreme Court responded to a joint application by the Office of the Public Defender (OPD) and the American Civil Liberties Union of New Jersey (ACLU-NJ), by approving a consent order negotiated between the OAG, County Prosecutor's Association of New Jersey (CPANJ), OPD and ACLU-NJ for the release of nearly 700 people serving relatively short sentences in our County jails. On April 10, 2020, the Governor issued Executive Order 124, after which several hundred State prison inmates were released to temporary home confinement.ⁱⁱⁱ And, finally, the Public Health Emergency Credits Bill was passed by the New Jersey Legislature and signed by the Governor on October 19, 2020. This first-of-its-kind law allowed for the early release of more than 3,000 State prisoners who were nearing the end of their sentences.

It is against this backdrop that the Commission has continued to examine ways to reduce racial disparity in New Jersey's prisons.

Part I: Commission Update

A. Status of Action Areas Identified in the First Commission Report

On November 12, 2019, the CSDC unanimously approved nine recommendations for sentencing reform. Over the following year and a half, the New Jersey Legislature introduced a variety of bills incorporating these recommendations but only three of the bills were signed into law. An update on the status of passed and proposed legislation related to the Commission's nine recommendations follows:

Recommendation #1: Eliminate Mandatory Minimum Sentences for Non-Violent Drug Crimes (*Not Implemented*); **Recommendation #2:** Eliminate Mandatory Minimum Sentences for Non-Violent Property Crimes (*Not Implemented*); **Recommendation #3:** Reduce the Mandatory Minimum Sentence for Second Degree Robbery and Second Degree Burglary (*Not Implemented*):

As part of the original bill package to implement the recommendations of the CSDC, legislation (S-2586 and A-4369) was introduced to eliminate specific mandatory minimum terms of imprisonment. A-4369 was substituted for S-2586, and passed the Senate on August 27, 2020. The bill was referred to the Assembly on September 14, 2020. Identical bills (S-3363 and A-5266) were introduced on January 12, 2021. No further action has been taken on these bills.

Additional bills (S-3456/A-5385 and A-5641/S-3658) were introduced to eliminate mandatory minimum terms of imprisonment for all non-violent crimes as defined in the bill and separately to expand the CSDC's recommendations by including certain specific additional crimes, i.e. official misconduct. S-3456 was substituted for A-5385. This legislation was conditionally vetoed and returned to the Senate on April, 19, 2021. S-3658 was substituted for A-5641 on June 24, 2021. The legislation was conditionally vetoed and returned to the Senate on June 28, 2021. No further action was taken on the legislation.

As discussed in greater detail below, in the absence of legislative action, the Attorney General issued Directive 2021-4 to waive the imposition of mandatory minimums for qualifying offenses.

Recommendation #4: Apply Recommendations #1, #2 and #3 Retroactively so that Current Inmates May Seek Early Release (*Not Implemented*):

S-2593 was reported out of the Senate Judiciary Committee, with amendments, on August 25, 2020. It was amended on the Senate floor on October 29, 2020 and again on November 16, 2020. No further action has been taken on this bill. The Assembly version of this bill (A-4370) was amended in both the Assembly Law and Public Safety Committee and Assembly Appropriations Committee, and passed the Assembly on July 30, 2020. It was amended in the Senate Judiciary Committee on August 25, 2020 and again on the Senate floor on November 16, 2020. No further action has been taken on this bill.

Recommendation #5: Create a New Mitigating Sentencing Factor for Youth (*Implemented*):

S-2592/A-4373 establish a new mitigating factor for those under age 26 at the time they committed their offense (enacted as L.2020, c.110). This law became effective on October 19, 2020.

Recommendation #6: Create an Opportunity for Resentencing or Release of Offenders Who Were Juveniles at the Time of Their Offense and Were Sentenced as Adults to Long Prison Terms (*Not Implemented*):

A-4372 was amended in the Assembly Appropriations Committee and passed the Assembly on July 30, 2020 and was referred to the Senate Judiciary Committee on August 3, 2020. The bill was reported out of the Senate Judiciary Committee, with amendments, on August 25, 2020, and was further amended on the Senate floor on October 29, 2020. This bill was substituted for S-2591 on June 21, 2021. No further action has been taken on this bill.

Recommendation #7: Create a Compassionate Release Program that Replaces the Existing Medical Parole Statute for End-Of-Life Inmates (*Implemented*):

S-2594/A-2370 establish a compassionate release program for inmates suffering from a terminal condition or permanent physical incapacity that renders them permanently physically incapable of committing a crime if released, repealing the law that established medical parole (enacted as L.2020, c.106). This law became effective on February 1, 2021.

Recommendation #8: Reinvest Cost-Savings from Reductions in the Prison Population Arising from These Reforms into Recidivism Reduction and Other Crime Prevention Programs (*Implemented*):

S-2595/A-4371 require a cost savings study of the compassionate release program and elimination of mandatory minimum terms; establishes "Corrections Rehabilitation and Crime Prevention Fund" (enacted as L.2020, c.109). Although this law became effective on October 19, 2020, the mandatory minimum terms have not been eliminated. So far as the Commission is aware, few inmates have been released under the compassionate release program.

Recommendation #9: Provide Department of Correction Funding (DOC) to Upgrade the Department's Existing Data Infrastructure. (*Not Implemented*):

S-2593 was reported out of the Senate Judiciary Committee, with amendments, on August 25, 2020. It was amended on the Senate floor on October 29, 2020 and again on November 16, 2020. No further action has been taken on this bill. The Assembly version of this bill (A-4370) was amended in both the Assembly Law and Public Safety Committee and the Assembly Appropriations Committee and passed the Assembly on July 30, 2020. The bill was amended in the Senate Judiciary Committee, and was amended again on the Senate floor on November 16, 2020. No further action has been taken on this bill.

Although the Legislature did not implement this recommendation, the CSDC has obtained financial support from Arnold Ventures to create a statewide information system through a joint venture between the Rutgers Team and the OAG.

Other Legislation Related to the CSDC *(Not Implemented)*:

S-3377/A-5239 were introduced to increase the size of the Criminal Sentencing and Disposition Commission and to broaden the Commission's reporting duties. These bills were introduced on January 21, 2021 and January 11, 2021, respectively. No further action has been taken on these bills.

The current two-year Legislative term ends at noon on January 11, 2022. Any legislation that is not approved by the Legislature and presented to the Governor for enactment into law at the end of the two-year term expires and would need to be reintroduced in the next legislative session.

B. Executive Response to Legislative Inaction: Attorney General Law Enforcement Directive No. 2021-4

In the absence of legislation to eliminate mandatory minimum sentences for non-violent drug offenders, the Attorney General issued a Law Enforcement Directive on April 19, 2021 ("Directive"), instructing prosecutors statewide to use existing statutory authority to waive the imposition of mandatory minimum sentences for non-violent drug offenders. This broad Directive establishes rules for applying waivers in four contexts: during plea negotiations, after conviction at trial, following violations of probation, and in connection with a joint application to modify the sentences of previously sentenced inmates who are currently incarcerated. The Directive took effect on May 19, 2021, and from that date through December 16, 2021, approximately 1,270 individuals who pled guilty or were convicted of qualifying non-violent drug offenses received waivers of

mandatory minimum sentences.

With respect to the Directive's retrospective component, on May 26, 2021, the Supreme Court assigned Superior Court Judge Susan J. Steele, J.S.C., retired and on recall, to oversee all motions brought under the Directive to eliminate the mandatory period of parole ineligibility for previously sentenced individuals. The Attorney General and the Public Defender filed a joint motion on behalf of an inmate who had been sentenced prior to the effective date of the Directive, seeking a change of sentence pursuant to New Jersey Court Rule 3:21-10(b)(3) to vacate the defendant's mandatory period of parole ineligibility. On August 24, 2021, Judge Steele denied the motion, ruling that the portion of the Directive that provides for the elimination of the mandatory minimum sentence for those who were previously sentenced exceeds the scope of the Attorney General's power. At the time of this writing, an appeal of Judge Steele's opinion, filed jointly by the Attorney General and the Public Defender and argued in the Appellate Division on November 15, 2021, is pending decision.

C. Judicial Developments

1. State v. Torres

In a recent significant decision, the New Jersey Supreme Court addressed the standards under existing law for imposing consecutive or concurrent sentences, holding that a trial court must provide an explanation as to the "overall fairness" of a sentence imposed on a defendant. State v. Torres, 246 N.J. 246, 272

(2021). In a unanimous opinion authored by Justice LaVecchia, the Court explained that its seminal opinion in State v. Yarbough, 100 N.J. 627 (1985), “represented [the] Court’s first attempt to formulate guidance for courts deciding whether sentences should be made consecutive or concurrent under...the [Criminal] Code.” Torres, 246 N.J. at 263. The Torres Court advised, however, that even after Yarbough’s admonition that “there can be no free crimes in a system for which the punishment shall fit the crime,” courts are required to retain focus on the fairness of the overall sentence.

Emphasizing that “uniformity and predictability should not come at the expense of fairness and proportionality,” the Court instructed that sentencing judges, even when imposing consecutive sentences, must provide “an explicit explanation of the overall fairness of a sentence, in the interest of prompting proportionality for the individual who will serve the sentence.” Id. at 271. This explanation, the Court held, will “foster consistency in sentencing, in that arbitrary or irrational sentencing can be curtailed and, if necessary, corrected through appellate review.” Id. at 272. Further, the Court accepted the principle that a person’s likelihood to recidivate dramatically decreases with age and should therefore be considered at sentencing. The Court held that “[a]ssessing the overall fairness of a sentence requires a real-time assessment of the consequences of the aggregate sentences imposed, which perforce includes taking into account the age of the person being sentenced.” Id. at 273.

The Court expressly sought the assistance of the Commission, indicating that it would “await further action by the New Jersey Criminal Sentencing and Disposition Commission, which may touch on some policy-laden sentencing arguments” advanced in the case. *Id.* at 252-253. In calling upon the Commission to take action, the Court highlighted various alternative sentencing models and stated that “although many states leave the decision to run sentences consecutively or concurrently to the discretion of the court... several states’ sentencing commissions have developed substantive guidelines or recommendations for courts to use[.]” *Id.* at 253, n.2. The Court also noted “that the Sentencing and Disposition Commission [was] slated to discuss matters related to age, recidivism, and timing of reviews for release,” and that “[t]he arguments and social science research of the parties and *amici* might assist the Commission in its deliberation of recommended legislative changes.” *Torres*, 246 N.J. at 274, n.11.

With respect to the question of consecutive or concurrent sentencing, the CSDC observes that there are a number of options available to the Legislature based on the statutory enactments of other states. These sentencing schemes run the gamut from requiring that all sentences run concurrently in the absence of express statutory provisions to the contrary, e.g., Ohio, to allowing entirely discretionary decisions with regard to concurrent or consecutive sentencing, e.g., Connecticut.^{iv} As well, there are variations in between, including the many states

that presume sentences to run concurrently, e.g., Oregon, Nevada, Missouri, Illinois, Georgia, Washington and Arkansas, and a few that presume that sentences will run consecutively, e.g., Virginia.^v In addition, some states consider factors such as whether the charges at issue were part of the same indictment, whether multiple victims were involved, and whether the defendant committed a felony offense while on parole, probation, or supervision.

New Jersey could choose any of these or other schemes. That said, an approach that includes a “general presumption in favor of concurrent sentences,” with exceptions for “selected categories of cases” has been proposed by the American Law Institute (ALI) in its Model Penal Code of Sentencing.^{vi} The Commission has looked to the ALI in its early work and anticipates that the ALI’s position will be at least a starting point for our review.

2. Juvenile Sentencing Cases

The Supreme Court has granted certification in two cases that present issues regarding juvenile sentencing, State v. Comer, No. 084509 (certification granted March 26, 2021), and State v. Zarate, No. 084516 (certification granted March 23, 2021). These grants follow a prior request by the Chief Justice that the Commission weigh in on the constitutional issues implicated by juvenile sentencing, a request that arose from the Court’s decision in State v. Zuber, 227 N.J. 422 (2017), in which the Court struck down as unconstitutional sentences of de facto life without parole imposed upon juveniles, i.e., sentences that were so

long that the defendant was unlikely to be released during his lifetime or at a time when he would have a meaningful opportunity for a life outside of prison. In the Zuber decision, the Court also discussed the “serious constitutional concerns” raised by “crimes committed by juveniles, which carry substantial periods of parole ineligibility.” The Court “encourage[d] the Legislature to examine this issue,” citing with approval statutes from a number of states that provide juveniles with an opportunity for resentencing or parole consideration from 15 to 25 years following their sentencing. Id. at 452 and n.3. The Legislature having failed to act, Comer raises the question of whether a mandatory 30-year period of parole ineligibility for a juvenile offender is unconstitutional as applied to him, and Zarate raises the issue of whether a 51-year sentence with a 42 ½ year period of parole ineligibility is unconstitutional. Comer and Zarate were argued in the Supreme Court on November 10, 2021, and are pending decision as of this writing.

D. Research Opportunities: Past and Present

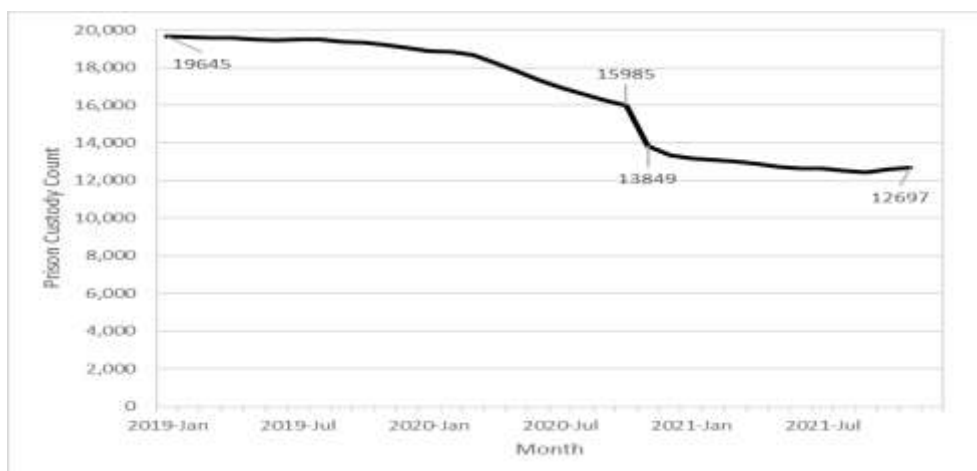
1. Data Collection

As noted earlier in this Report, an unintended consequence of the early release of thousands of incarcerated individuals in New Jersey is the availability of recidivism data. Pandemic-related early release creates a large sample size, presenting an opportunity to collect information about recidivism rates for specific crimes and the impact that certain factors, including the presence or absence of familial support or parole supervision, age at time of release; and

participation in educational programming while incarcerated, have on recidivism rates. The DOC has made data available on the prison population, and the State Parole Board (SPB) has provided similar information on parolees. This information can be linked with arrest data from the New Jersey State Police in order to study recidivism.

2. Arnold Ventures

The Commission has obtained additional financial support from Arnold Ventures to assist in collecting and analyzing this critical data. The graph below provides the number of individuals in DOC custody (an estimate of the average daily count in a given month) between January 2019 and November 2021. During this period, the prison population has declined substantially from 19,600 to 12,700, or over 35%. The largest single-month drop in that population corresponded to when the public health emergency credits bill became effective in November 2020, when the average daily population declined from 16,000 to 13,800.



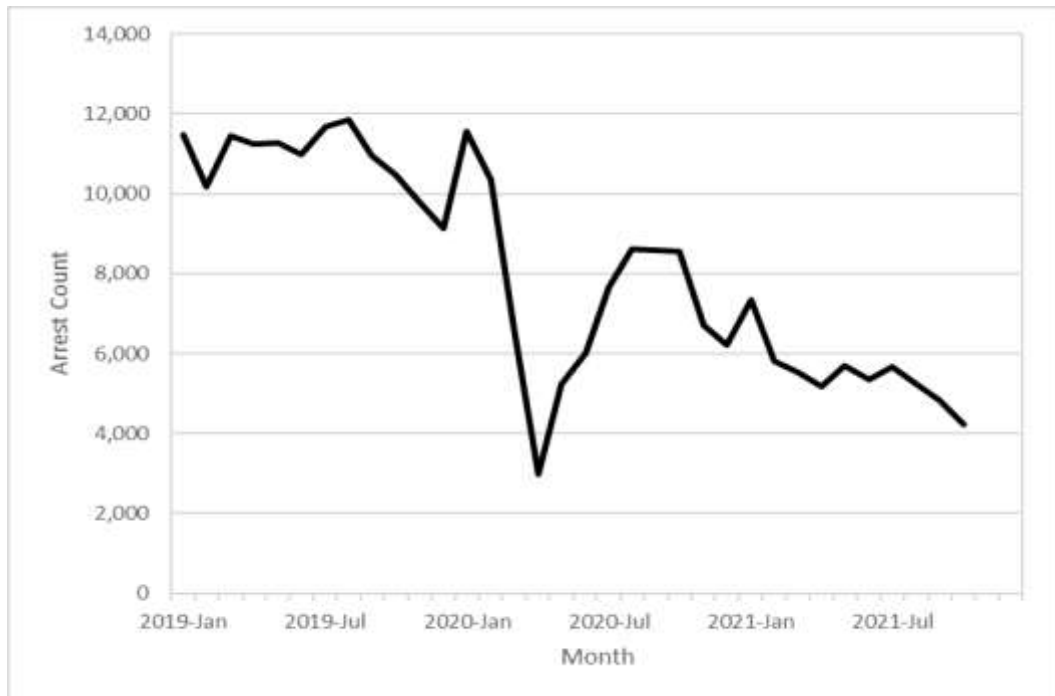
DOC single-day snapshots in November 2019 and November 2021 further indicate that the racial/ethnic makeup of the imprisoned population has remained stable over the two-year period. In November 2019, 20% of the State prison population was non-Hispanic white, 61% was non-Hispanic Black, and 17% was Hispanic.^{vii} As of November 2021, the corresponding percentages are 20%, 61%, and 16%. Thus, although large reductions in the size of the prison population have been achieved, the racial disparities remain stark.

Public safety is an obvious concern in light of the release of large numbers of individuals from DOC custody. In a provisional analysis of one-year re-arrest rates, the first cohort of individuals released under the public health emergency credits bill had only a negligibly higher likelihood of being rearrested within one year of release. The table below shows the re-arrest rates for these individuals compared to their counterparts released in earlier time periods. The conclusion from this table is that public safety was not compromised by the release of a large cohort of individuals on a single day. The CSDC anticipates receiving a report from the Rutgers Team on the practical challenges of releasing such a large group of individuals in a short period of time.

Release Cohort	Number of Individuals	% Re-arrested in One Year
2016 – 2018	30,675	23.0%
2020 (Jan. 1 – Nov. 3)	5,951	23.1%
Nov. 4, 2020	2,054	24.5%

An additional way to respond to public safety concerns is to examine statewide arrest patterns. The graph below provides the total number of arrests

for finger-printable offenses, between January 2019 and October 2021. Note that these refer to all arrests and not just arrests of individuals released from state prison. The overall total number of arrests have been on a downward trend since the middle of 2019, and have returned to that trend following a disruption during the early months of the COVID pandemic.



The CSDC intends to analyze data on these and other issues as it becomes available from state agencies. With the assistance of the Rutgers Team, the impact of the Commission's recommendations on the courts, the prison population, and public safety will be closely monitored.

3. Chapter 120 Data Project

Under a recently enacted law, the Attorney General is required to “establish a program to collect, record, and analyze data” regarding defendants

in the State's criminal justice system.^{viii} The new law, known as "Chapter 120," mandates that the Attorney General compile data concerning all aspects of a defendant's passage through the justice system, from arrest to prosecution to release from custody. This mandate presents a significant challenge, since the data is not now stored in a single repository and is instead scattered across multiple records systems maintained by various State, County, and local government agencies. To comply with Chapter 120, the Attorney General has concluded that it is necessary to build a new, comprehensive statewide criminal justice data system that integrates records from multiple sources.

The OAG seeks to build this new system in two phases. Phase 1 will involve an assessment of existing criminal justice data systems undertaken by the Rutgers Team.^{ix} The researchers will evaluate the strengths, weaknesses, and gaps in these systems and recommend ways to integrate them into a comprehensive statewide system. To complete this assessment, the Attorney General will ensure, through authority vested by Chapter 120, that the Rutgers Team has full access to State, County, and local data at relevant agencies, including the New Jersey State Police, Division of Criminal Justice, Juvenile Justice Commission, Administrative Office of the Courts, Department of Corrections, State Parole Board, County Prosecutor's Offices, and local law enforcement agencies. The Rutgers Team will also interview staff, inspect data systems, and review underlying information maintained by the participating agencies. The OAG expects the assessment to

be completed by early 2022.

Phase 2 will carry out the recommendations developed during Phase 1 and will involve the development of a new, comprehensive statewide data system, most likely through the integration, consolidation, and/or expansion of the existing data systems. The Attorney General's ultimate goal is to establish a single-source, individual-based system to (1) facilitate information sharing across criminal justice agencies, and (2) provide needed, comprehensive analytics to guide decision-making, evaluate policies and procedures, and identify patterns and trends in the data.

The creation of a consolidated data system will greatly advance the CSDC's mission. The ability to view, in a single repository, individual and aggregate data about the age, recidivism rates, and sentence lengths, among other things, of those entering the criminal justice system in New Jersey is crucial to the formulation of sound policy. The Attorney General has committed to working with other CSDC members to ensure that this new data system serves the needs of New Jersey's various criminal justice stakeholders and reflects the statutory goals of the Commission to study and eliminate racial disparities.

Part II: Call to Action

The Commission reaffirms its unanimous support for the recommendations made in its November 2019 report and, more particularly, those recommendations that have not yet been enacted. Indeed, the elimination of mandatory minimum sentences for non-violent drug offenses remains the centerpiece of the Commission's efforts to reform New Jersey sentencing laws and reduce the racial disparities created by those laws. The data is clear that the mandatory minimum sentences attached to certain drug offenses, particularly the 1,000-foot school-zone statute, have resulted in a disproportionate impact on urban residents who are predominantly persons of color. Over three-quarters of inmates serving sentences under the school-zone law are Black, likely making the school-zone law the single largest contributor to racial disparity in our prison system. The Commission urges the Legislature to eliminate mandatory minimums for nonviolent drug offenses in accordance with Recommendations One and Two from the Commission's 2019 report.

The Commission also urges the Legislature to adopt Recommendation Six, creating an opportunity for the resentencing or release of offenders who were juveniles at the time of their offenses and were sentenced as adults to long prison terms. Over the past decade, the United States and New Jersey Supreme Courts have issued numerous opinions recognizing developments in juvenile brain science and reflecting a nationwide consensus that juvenile offenders are categorically less

culpable and more amenable to rehabilitation than adults. As noted earlier, these judicial decisions have led to sweeping change in the sentencing of juvenile offenders. Yet, New Jersey continues to deny opportunities for offenders who were juveniles at the time of sentencing to later obtain judicial review of their sentences. Acknowledging the significant constitutional concerns raised by the lack of a statutory mechanism for this purpose, our Supreme Court has urged the Legislature to “consider enacting a scheme that provides for later review of juvenile sentences with lengthy periods of parole ineligibility, and to consider whether defendants should be entitled to appointed counsel at that hearing.”

Under the Commission's recommendation, an offender sentenced as an adult for a crime committed as a juvenile to a term of 30 years or greater would be entitled to apply to the court for resentencing after serving 20 years. At the resentencing, the court would consider the diminished culpability of youth as compared to adult offenders, including chronological age and immaturity, impetuosity, and the failure to appreciate risks and consequences, and could modify or reduce the base term of the sentence to any term that could have been imposed at the time of the original sentence, the period of parole ineligibility or both. On resentencing, the inmate would be subject to parole supervision for the remainder of the sentence that was originally imposed.

Again, the Commission urges the Legislature to act on this recommendation, ensuring that those serving lengthy sentences for crimes committed as a juvenile

have a realistic and meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation.

Part III: Subcommittee Updates and Framework for Future Work

Since the Commission's November 2019 report, the members have focused on reforms addressing racial disparity and inequities in the criminal justice system on both the "front end" (a defendant's sentence) and the "back end" (a defendant's release from prison). To that end, the Commission has created two subcommittees: one to study mandatory minimum sentences and one to study rehabilitative release. A description of each subcommittee's work follows:

A. Subcommittee to Study Mandatory Minimum Sentences

The work of the Subcommittee on Mandatory Minimum Sentences has focused on the mandatory minimum sentences for violent offenses required by the No Early Release Act (NERA or the 85% rule) and for gun related offenses required by the Graves Act. The goal of the Subcommittee is twofold: (1) to assess the impact of mandatory minimum sentences on New Jersey's prison population, and (2) to assess, consistent with the Commission's statutory charge, the impact mandatory minimum sentences have on the glaring racial disparities in our prison population.

1. Subcommittee Findings: NERA and Graves Act

The Subcommittee's initial findings are clear - mandatory minimum sentences for NERA and Graves Act offenses have a significant impact on mass incarceration in New Jersey's prisons. As of November 2021, there were 12,700 inmates in our State prisons. Although Black persons make up only 13% of the State's population, they

make up 61% of the prison population. The numbers are stark: when Hispanic persons are included, Blacks and Hispanics together account for 79% of the people in Department of Corrections custody. Most important for our inquiry, over three quarters of the prison population is serving a mandatory minimum sentence under either the Graves Act, NERA, one of the drug statutes carrying mandatory minimum penalties, or any combination of the three. The vast majority of persons in prison, 64%, are serving a sentence under the Graves Act or NERA.

The Subcommittee has reviewed data from the DOC and the Administrative Office of the Courts (AOC) in order to determine which statutes result in the largest racial disparities. Although this data does not include the population held in New Jersey's County jails, the prison data indicates that the Graves Act is the single largest contributor to racial disparities in the State system. Over a quarter of the incarcerated population, 27%, is serving a sentence under the Graves Act and Black persons are substantially overrepresented among those serving Graves Act sentences.

The offenses of unlawful possession of a weapon ("UPW"), N.J.S.A. 2C:39-5b, and possession of a weapon for an unlawful purpose, N.J.S.A. 2C:39-4a, account for 24% of Graves Act sentences. In 2019, 3,167 people were incarcerated in State prison for unlawful possession of a weapon and 1,243 people were incarcerated in State prison for possession of a weapon for an unlawful purpose. Of all mandatory minimum sentences, the racial disparities for these two sentences are the most

pronounced. Of people sentenced to simple possession and UPW under N.J.S.A. 2C:39-5b, 91% are minorities and 80% are Black, a percentage that far exceeds the total percentage of Black persons in prison. Put another way, of the 3,167 people in prison on an unlawful possession of a weapon charge, 2,554 are Black, 360 are Hispanic, and 216 are white.

Preliminary simulations prepared by the Rutgers Team have shown how racial disparities in our prison population would be reduced if the Legislature made changes to the Graves Act. Because 80% of people sentenced under the Graves Act are Black, reform on this front would yield the largest gains in reducing racial disparities in our prison system. The Subcommittee has also begun a review of county-by-county disparities in the imposition of custodial sentences under the Graves Act. Preliminary analysis has shown extreme county-by-county variations for dispositions in single-count UPW cases. In Mercer County, for example, 6% of the people who pled to this charge were sentenced to State prison whereas defendants in other counties who pled to this charge were generally sent to State prison with few exceptions.^x The Subcommittee plans to examine a larger sample of cases to understand how county-by-county charging and plea-bargaining decisions lead to racial disparities in the system.

As with Graves Act sentences, NERA minority inmates are overrepresented and white inmates are under-represented. Any Legislative action on a NERA offense for which the percentage of Black and Hispanic defendants is higher than 61% and

16% – the total percentages of Black and Hispanic persons in DOC custody – has the potential to decrease racial disparities.

2. Future Work of the Subcommittee: Charging Decisions Under NERA and the Graves Act

Data from the AOC is being collected and evaluated to determine the extent to which initial charging decisions create racial disparities in the prison system. The Subcommittee will examine NERA and Graves Act offenses, starting with the top five most frequently imposed NERA sentences, to determine whether minority defendants sentenced to those charges were more likely to be charged with more serious charges at the time of arrest or indictment and whether they were more or less likely to later have their charges reduced through plea bargaining. Looking back to initial charging decisions for defendants sentenced under NERA or the Graves Act between 2013 and 2019 will help us understand how charging decisions contribute to racial disparities in our prison system. It will also show how these decisions differ county-by-county and what effect those differences have on racial disparity in the system.

More specifically, the Rutgers Team has begun to collect data on outcomes for defendants sentenced under the Graves Act between 2013-2019 who were charged with and later convicted of UPW under N.J.S.A. 2C:39-5b and/or other weapons-related offenses. For the most undiluted results, the Subcommittee will examine a data set limited to defendants charged in a single-count accusation or

indictment and then expand the data set to include multi-count cases. The Rutgers Team has requested information from the AOC on the periods of parole ineligibility received by people sentenced to prison under N.J.S.A. 2C:39-5b, including how those periods of parole ineligibility vary by County.

At this juncture in the Subcommittee's work, the members are able to report that NERA is a driving force behind mass incarceration, and that the Graves Act is the largest single contributor to racial disparities within the prison system. The Subcommittee, with the help of the Rutgers Team, will continue to expand the dataset, obtain additional information from the AOC, and craft recommendations that will reduce the glaring racial disparities created by these non-discretionary laws. The data will also include additional information about sentencing practices from county-to-county so that the CSDC can determine how different sentencing practices in the various counties may have an impact on the issue of disparity.

3. Future Work of the Subcommittee: County Jails and the Presumption Against Imprisonment

An additional issue under consideration by the Subcommittee involves the presumption against imprisonment generally applied to third and fourth degree offenses. See N.J.S.A. 2C:44-1e. In State v. Haryte, 105 N.J. 411, 419 (1987), the Supreme Court interpreted the term "imprisonment" to mean a state custodial sentence. As a result, the presumption against imprisonment does not have to be overcome in order to impose a sentence of probation that includes service in a

County jail of up to 364 days. N.J.S.A. 2C:45-1e. Similarly, the presumption does not have to be overcome in order to impose a custodial sentence of up to six months in County jail for a non-indictable offense or a custodial sentence of up to one year in County jail for a fourth-degree offense. See N.J.S.A. 2C:43-10b; 2C:43-6a(4). It is important that we understand the impact of this difference in how people are sentenced to County jail and State prison and that we evaluate whether certain people who could not be sentenced to State prison are being unfairly incarcerated. Because there has been no consideration of the quantitative impact of the presumption of imprisonment, including the number and race of defendants confined as a result of the distinction, the impact of the presumption on the goals and purposes of sentencing will be studied by the CSDC.

B. Subcommittee to Study Rehabilitative Release

The Subcommittee on rehabilitative release is considering the implementation of an early release program for those incarcerated individuals who satisfy certain criteria. The genesis for this program is a recognition that the continued incarceration of individuals who no longer present a risk of reoffending does nothing to further public safety and is an unnecessary drain on State resources. More than three-quarters of the DOC's inmates are serving prison sentences that include a period of parole ineligibility, requiring their continued incarceration for a fixed period of time, notwithstanding that they may no longer pose a risk to society. A rehabilitative release program will create a mechanism for these inmates to petition

for early release - despite parole ineligibility - if they meet certain criteria and can demonstrate their rehabilitation. This program would complement the 2020 “Earn Your Way Out” (EYWO) law that makes it easier for inmates convicted of non-violent offenses to obtain release once they become parole eligible, as discussed in greater detail below.

The Subcommittee has identified three main areas for consideration in developing a program for early release: (1) defining who will be eligible for possible release; (2) deciding who will conduct the release assessment (parole or the courts); and (3) determining what the legal standard for release will be. Critical to the Subcommittee's work is an analysis, consistent with the Commission's statutory charge, of the impact this program will have on reducing the significant racial disparities in New Jersey's prison population.

To function effectively, a rehabilitative release program will require objective criteria to determine which individuals are eligible to apply. Possible criteria include:

- A minimum number of years served in custody;
- A percentage of the sentence served at time of application;
- Minimal serious disciplinary infractions while in DOC custody;
- Passage of a number of years since the inmate filed his or her most recent petition for rehabilitative release; and/or
- A minimum number of hours enrolled in DOC programming designed to promote rehabilitation.

The program could also include additional restrictions for inmates convicted of

certain violent or serious offenses. These restrictions could take two forms: (1) excluding all inmates convicted of certain offenses; and/or (2) requiring that inmates convicted of certain offenses meet heightened eligibility criteria.

An individual who meets the eligibility criteria could request a certificate of eligibility from the DOC, which would allow the inmate to file a petition in Superior Court and obtain legal representation from the OPD. Upon the filing of a petition, the Superior Court would schedule a hearing to determine whether to order the inmate's release. Various aspects of the judicial review process are still under consideration by the Subcommittee, including:

- The standard that the court should apply in deciding whether to grant an inmate's petition (e.g., "inmate is rehabilitated," "inmate is highly unlikely to reoffend");
- The factors the court can or must consider when determining whether the standard has been met, and whether these factors are exhaustive;
- The burden of proof, and which party carries the burden; and
- Whether the State and any victims must be provided notice and an opportunity to be heard.

In addition to the above considerations, an individual's advanced age or serious health issues could be relevant to the court's determination.

While the Subcommittee members agree that the release determination should be made by the court rather than by the SPB, the group has not yet reached a consensus as to other aspects of the program. Additional data is needed to inform the Subcommittee's recommendations, including data on recidivism rates for

different offenses and over varying periods of time (e.g., one, three or five years after release). The Subcommittee also requires current data on the number of individuals who would be eligible to apply for early release, the crimes these individuals were convicted of, and the sentences they received. Also critical to the Subcommittee's work is an analysis of the fiscal impact of a rehabilitative release program on the DOC and the courts, as well as a list of available reentry programming in the community and the costs associated with those programs. Similarly, the Subcommittee requires an understanding of the rehabilitative programming available within the prison, including a determination of what programming is associated with lowering recidivism rates, the extent of programming currently available to incarcerated individuals and the costs associated with increasing programming. The race and ethnicity of inmates eligible to apply for release and the potential impact this program would have on racial and ethnic disparity is also needed.

A rehabilitative release program would be different from, though complementary to, the EYWO legislation that took effect on February 1, 2021. EYWO created a process known as “administrative parole” in order to streamline the release of certain inmates upon parole eligibility. The law establishes a presumption of parole for nonviolent offenders who have not committed any serious infractions for at least two years while incarcerated and have completed required rehabilitation programs. Parole may be granted without a hearing in those

circumstances. The first EYWO release of an individual to parole supervision occurred on July 26, 2021, and from that time through December 10, 2021, approximately 330 individuals have received administrative parole under EYWO. In contrast to a possible rehabilitative release program that entails legal representation and court involvement, EYWO is a process run entirely through the DOC and the SPB.

C. Mandatory Fines, Assessments and Penalties

The Code of Criminal Justice provides for mandatory fines, assessments and penalties^{xi} (generally, penalties), but both the Code and case law provide limits on the consequences of non-payment, collection, and allocation of those penalties. The Rutgers Team has begun to collect data about penalties not paid, how penalties are handled after release on parole, and whether sentences to probation are extended in an effort to collect penalties. Whether efforts to collect unpaid fines, assessments, penalties and costs outweigh the amount collected remains an unanswered question. The CSDC expects to evaluate whether the growing number of independent and separate monetary assessments are counterproductive and more costly than the payment into a single fund to be allocated by the Legislature or by the Executive branch as appropriate. As part of this review, the Commission will consider the impact of collection and non-collection on defendants, including their efforts to support their families and the costs to the communities in which they live.

D. Office of the Public Defender Parole Project

In April 2020, the OPD convened a Parole Project Committee to consider reforms that would facilitate the release of parole-eligible individuals who have been rehabilitated. The Committee issued a revised report on September 24, 2021, with a series of recommendations that are dependent upon structural changes within the OPD and changes achieved through legislation action. Much of the Committee's work has focused on the right to counsel because under New Jersey's current system only those parole applicants who can afford to hire an attorney receive help preparing for their parole hearings (even hired counsel cannot be physically present at the hearings) and submitting written documents to the SPB.

The OPD Report raises concerns about due process and right to counsel protections in the parole process, concerns that the Commission understands as central to its charge. In setting its agenda for next year's report, the Commission will include consideration of parole reform as proposed by the OPD.

Endnotes

- ⁱ See Yoon, H. and Gonzalez, D. (Dec. 31, 2021). What It's Like to Leave Prison During a Pandemic. *The New York Times*.
[https://urldefense.com/v3/_https://www.nytimes.com/interactive/2021/12/31/nyregion/ny-nj-reentry-covid.html_!!J30X0ZrnC1oQtbA!a7RPPnYT8OUJgoRYUkpe1bFohfCY_X9h8SRzkldaxtTCz84HtpgDVlkdvS2gDly7b8PBLg\\$](https://urldefense.com/v3/_https://www.nytimes.com/interactive/2021/12/31/nyregion/ny-nj-reentry-covid.html_!!J30X0ZrnC1oQtbA!a7RPPnYT8OUJgoRYUkpe1bFohfCY_X9h8SRzkldaxtTCz84HtpgDVlkdvS2gDly7b8PBLg$)
- ⁱⁱ Cumulative totals from the start of the pandemic through December 28, 2021, [New Jersey Department of Corrections \(njdoc.gov\)](https://www.njdoc.gov/). These totals are updated on the DOC website regularly.
- ⁱⁱⁱ On June 5, 2020, the Supreme Court modified and supplemented Executive Order 124 to comport with due process, creating an expedited furlough decision-making process, providing inmates an opportunity to be heard, and allowing for appellate review of furlough denials. In re Request to Modify Prison Sentences, Expedite Parole Hearings, & Identify Vulnerable Prisoners, 22 N.J. 357 (2020).
- ^{iv} Ohio Rev. Code Ann. § 2929.4; Conn. Gen. Stat. Ann. § 53a-37.
- ^v Or. Rev. Stat. Ann. § 137.123; Nev. Rev. Stat. Ann. § 176.035; Mo. Ann. Stat. § 558.026; IL ST CH 730 § 5/5-8-4; Ga. Code Ann. § 17-10-10; Wash Rev. Code § 9.94A.589(1); Ark. Code Ann. § 5-4-403; Va. Code Ann. § 19.2-308.
- ^{vi} American Law Institute's Model Penal Code: Sentencing; Official Statutory Text. § 9.07(2) (Am. Law Inst. 2017).
- ^{vii} The percentages reported here do not necessarily sum to 100% because of rounding error.
- ^{viii} N.J.S.A. 52:17B-111.1 (P.L. 2020, c.120).
- ^{ix} A copy of this agreement is attached.
- ^x In 2019, 93% of people sentenced to UPW in Camden County went to prison and 95% of people sentenced to UPW in Union County went to prison.
- ^{xi} See, e.g., N.J.S.A. 2C:43-3, 3.1, 3.2, 3.3, 3.4, 3.5, 3.6, 3.7, 3.8.

Rutgers will form a *Justice Data System Assessment Team* that will:

- Meet with the IT team of each statewide NJ justice agency that collects administrative data relating to the justice processes of arrest, charging, prosecution, trial, conviction, and correction.
- Conduct an assessment of the existing records system of each agency, including a catalogue of its current uses, strengths and weaknesses, as well as its potential for contribution to a comprehensive statewide data system;
- Provide a report to each agency that describes where each agency's data system sits within the constellation of NJ justice data systems; and
- Provide a report to the Office of the Attorney General (OAG) that evaluates existing statewide justice data and records management systems; identifying strengths, weaknesses, and gaps; providing recommendations for ways to create a comprehensive statewide justice data system.

Statewide justice system agencies will:

- Meet with the Rutgers justice data system assessment team, making available the IT system direct manager (person who maintains system and pulls data files when they are requested), IT administrator (person who is responsible for the data system) and any research staff who use the data to provide internal reports;
- Provide a complete description of the administrative data system, including the data structure, a listing of all data elements in that structure, a manual of the data collection instruments used for the system, a listing of routine reports that are now produced using the system, and a description of strategies for routine system modifications;
- Be prepared to discuss/explain data elements that are used to link individual records internally and externally, frequent linkages that are currently produced with other agencies, and problems that are encountered in records linkage procedures;
- Summarize the agency policy and practice regarding external requests for data with special reference to any legal limitations on data sharing; describe typical requests for data, where those requests came from, how they were (or are being) handled;
- Describe current issues they encounter with data systems management (including external contracts for system maintenance) existing plans for addressing those problems and/or upgrading the system, and summarize any resources needed to achieve/maintain a state-of-the-art data system.

The following agencies will be involved in this assessment:

- State Police
- Division of Criminal Justice
- Juvenile Justice Commission
- Administrative Office of the Courts
- Office of the Public Defender
- Department of Corrections
- State Parole Board

This assessment will begin on July 1, 2021, and will continue until it is completed, with a plan for final reports by January 1, 2022.

Acknowledgements

At the end of its first Report in 2019, the Commission members recognized and gave thanks to the many individuals and organizations who had contributed to the work of the Commission. Most of those individuals continued to provide their assistance as we continued our work under pandemic conditions and we refer the reader to the 2019 Report, “Acknowledgements” section, for the names of those who were early contributors.

In this 2022 Report, the Commission acknowledges the people who have provided separate and substantial assistance in the period leading up to the second Report and who have participated in the writing and review of the draft for presentation to the full Commission.

The Commission recognizes and gives special thanks to the following:

Commission Legislative Staff

Gabriella B. Ferri, Senior Counsel, Office of Legislative Services

Carolyn I. Roscoe Wright, Principal Counsel, Office of Legislative Services

Research Assistance

Arnold Ventures, which generously funded the Rutgers Research Group and the joint venture between Rutgers and the OAG to develop an integrated statewide criminal justice data system, and specifically:

Jeremy Travis, Executive Vice President of Criminal Justice

Julienne James, Vice President of Criminal Justice

The Rutgers Research Group

Robert Apel, Professor, School of Criminal Justice

Writers and Advisors

Principal Writer

Alison Perrone, First Assistant Deputy Public Defender

Contributing Writers

Andrew Macurdy, Counsel to the Acting Attorney General

Lawrence S. Lustberg, Chair, Commercial and Criminal Litigation, Gibbons P.C.

Advisors

Hon. Nellie Pou, State Senator

Lenny Ward, Retired Director of the Divisions of Parole and Community Programs

Guest Advisor

Didier Fassin, James D. Wolfensohn Professor, School of Social Sciences, Institute for Advanced Study