

# Wanted for Warrants: A Report to Governor-Elect Murphy's Transition Team on Law & Justice



## Overview:

It has been estimated that more than two million people in New Jersey have outstanding arrest warrants for low-level criminal and traffic offenses. Thousands of people across the state live in fear of being arrested on an outstanding warrant for a fine that they cannot afford to pay. Child support, traffic fines, failing to appear in court, and disorderly persons offenses clog our court systems with little hope of successful resolution.

To resolve outstanding criminal and traffic warrants, defendants must travel through a daunting labyrinth. Poverty is a significant deterrent to resolution. The threat of arrest looms over some people for years, damaging employment and family responsibilities.

For an individual released from prison, this issue is critical to putting the pieces of his or her life back together after incarceration. All too often, someone serves a prison sentence, leaves the institution, and then finds themself still facing outstanding warrants for child support, traffic violations, or municipal level offenses.

People can return home, find jobs, and be quickly re-incarcerated on old warrants creating a significant disruption for their families, employers, and their progress. There is an expectation that when you have served your sentence that you have figuratively and literally paid your debt to society.

Executing warrants is dangerous for both the defendant and law enforcement. Finding peaceful and effective ways of resolving warrants is in everyone's best interest. If New Jersey can begin to reform its bail system, a system that permitted its jails to serve as de facto debtor's prisons, a more effective solution can be achieved related to low level warrants for arrest.

This issue is not endemic to New Jersey. There have been large-scale efforts to assist individuals with outstanding warrants. But despite the thousands of people assisted, substantive system change has not happened.

## Key Recommendations:



- Eliminate fines and or develop feasible resolutions for individuals who are unable to pay criminal justice debt
- Reveal and resolve all outstanding warrants during the initial hearing or at sentencing for incarceration
- Create protections through legislation or court rules to require resolution of warrants

With an estimated **10 million owing \$50 billion** (Evans, 2014) in criminal justice debt nationally, coupled with an incarceration rate that outpaces the rest of the world, examining the recommendations for reducing the paths to continuously jailing the poor is a moral and fiscal imperative. The ramifications for perpetuating unjust and unconstitutional court practices are significant. An examination of costs - hidden, human, and financial - will hopefully illuminate a path to reform.

New Jersey must examine the impact of outstanding warrants on those affected including individuals who are struggling to resolve their warrants, law enforcement, and policy makers who have a vested interest in fixing this broken system.

## Criminal Justice Debt: The Scope of the Problem

Legal entanglements are exacerbated if you don't have financial resources. We can all relate to getting issued an expensive and inconvenient speeding ticket but what if the anxiety of being pulled over by law enforcement was coupled with a fear of outstanding legal issues to which you were unable attend because of lack of money, time, transportation, immigration status, or general wherewithal? If your legal situation was aggravated by a substance abuse problem, a mental health diagnosis, housing instability, a low wage job, or a lack of family support, what would the weight of those problems feel like and what would life be like for someone carrying it? If you knew that there was a warrant for your arrest for fines you couldn't pay or for behavior in which you participated, how empowered would you feel to resolve these issues?



Evaluations of county crime databases found that court violations (e.g. failure to appear) accounted for **over half** of the warrants and that approximately **75%** of those court violations were for traffic offenses.

The reality is that this is the lived experience of millions of people across the United States each day. While the term *fugitive* may conjure images of someone fleeing the country or someone wanted for a capital crime, it can be applied to anyone who has an outstanding arrest warrant; criminal or civil. Evaluations of county crime databases found that court violations (e.g. failure to appear) accounted for over half of the warrants and that approximately 75% of those court violations were for traffic offenses.

Although there is little research on the amount of active warrants across the country, a study of the Wanted Persons file maintained by the National Criminal Information Center (NCIC) shows that approximately 2 million warrants are active on any given day (Bierie, 2014, p. 327). But, NCIC has significant limitations in that state and local law enforcement tend to only enter warrants that are more severe. For example, there are enormous disparities between the nearly 27,000 warrants listed for Missouri in NCIC in 2011 and the number of warrants outstanding in just Ferguson in 2014. Ferguson Missouri is home to approximately 21,000 but in December 2014, over 16,000 people had outstanding arrest warrants issued by their municipal court. The US Department of Justice reports that in 2013 alone, Ferguson issued warrants to more than 9,000 people for nearly 33,000 different offenses (USDOJ, 2014). It is not unfair to suggest that the number of individuals wanted on outstanding arrest warrants is staggering when one considers the lack of a centralized system for quantifying the number of actual arrest warrants in all localities across the country, and the under-representation of these local warrants in empirical studies.

The unrest in Ferguson, Missouri after the fatal police shooting of an African American male in 2014 drew international attention to the unlawful court and police practices that served to erode trust between residents and law enforcement. The blistering report from the US Department of Justice Civil Rights Division on the Ferguson Police Department unmistakably depicts law enforcement practices as violating the law, undermining community trust, and evidencing racial bias. The Justice Department's report

detailed the efforts of the Ferguson Police Department as focused on generating revenue, and unequivocally stated that many of the unlawful stops of the FPD were driven in part by an officer's desire to check whether the subject had a municipal arrest warrant pending. The court practices were draconian. A single missed, partial, or untimely payment to court was treated as a missed appearance and arrest warrants would be immediately issued without any notice or opportunity for explanation. For people with limited or no financial means, these practices resemble that of a debtor's prison with no credit for time served.

In her ethnographic work, Alice Goffman discusses the role of policing and supervision in the lives of young men living in a poor black neighborhood, and describes that for many of these young men, avoiding jail has become a daily preoccupation. Goffman states: "Such threats of imprisonment transforms social relations by undermining already tenuous attachments to family, work, and community. But young men also rely on their precarious legal standing to explain failures that would have occurred anyway, while girlfriends and neighbors exploit their wanted status as an instrument of social control" (Goffman, 2009, p. 339). Goffman asserts that the lives of residents are organized precisely around fear of being sent to jail, and goes as far to declare that law enforcement enters poor black communities not to promote public safety, but rather to line city coffers.



"Such threat of imprisonment transforms social relations by undermining already tenuous attachments to family, work, and community." -Alice Goffman

However aptly that statement may describe the bad acts of the Ferguson Police Department, caution needs to be exercised when indicting unlawful court

and law enforcement practices that prey on poor communities of color while excusing the behavior of individuals committing violent crimes in the community. It would appear there are two populations being affected by outstanding arrest warrants: those simply without resources to satisfy high court fees or fines, and those who have served their criminal sentences and still are saddled with unsettled matters. Their lifestyles may be very different, but the solutions can apply to both.

Removing the constant threat of confinement for low income individuals who desire to be law-abiding is imperative if a community wants to promote public safety and community engagement.



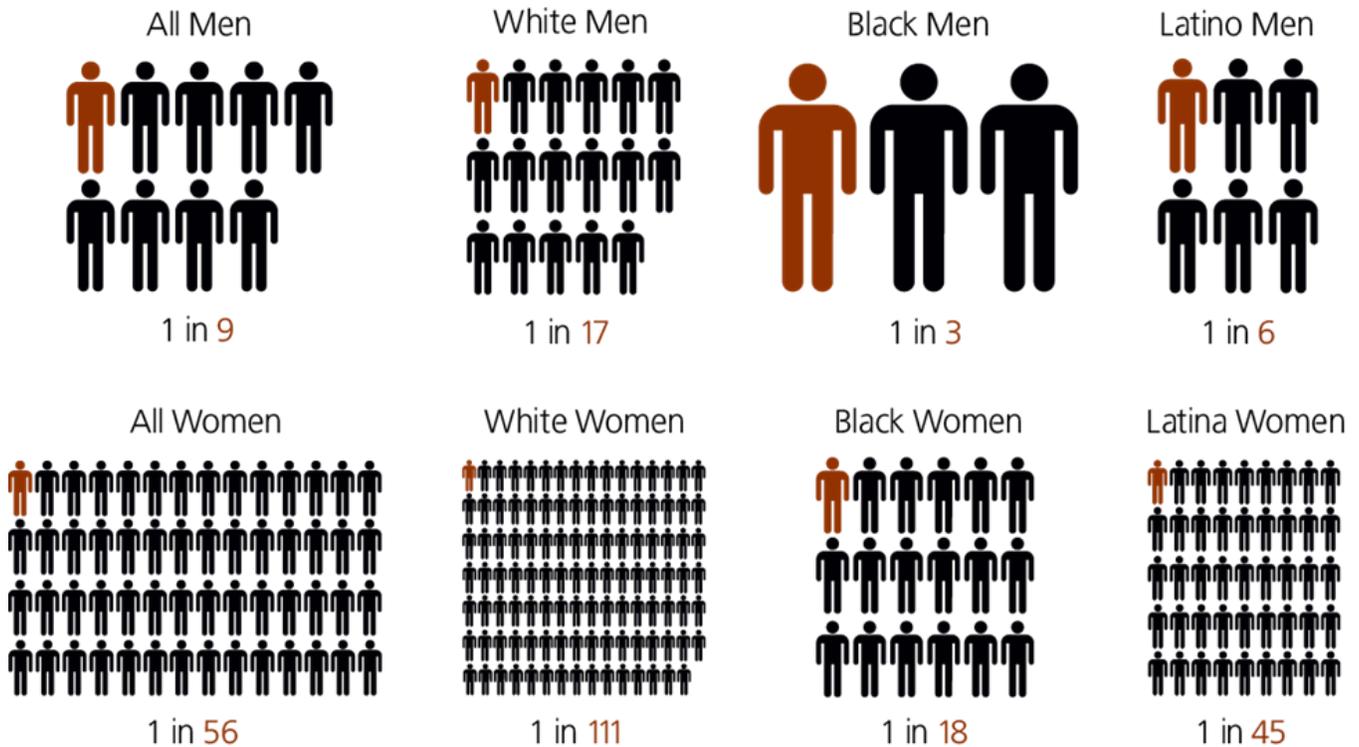
Mistrust between law enforcement and high crime neighborhoods erodes the value of being law abiding as it may be perceived as unachievable. A key recommendation for remedying unlawful enforcement practices and repairing community trust is to stop using arrest warrants as a means of collecting owed fines and fees and allowing amnesty programs to resolve outstanding legal matters (USDOJ, 2014). Removing the constant threat of confinement for low income individuals who desire to be law-abiding is imperative if a community wants to promote public safety and community engagement.

### Race Matters

At every stage of the criminal justice system, people of color fare worse than their White counterparts. The Sentencing Project reports that "sentencing policies, implicit racial bias, and socioeconomic inequity contribute to racial disparities at every level of the criminal justice system. Today, people of color make up 37% of the U.S. population but 67% of the prison population. Overall, African Americans are more likely than white Americans to be arrested; once arrested, they are more likely

to be convicted; and once convicted, they are more likely to face stiff sentences. Black men are six times as likely to be incarcerated as white men and Hispanic men are more than twice as likely to be incarcerated as non-Hispanic white men.”

## Lifetime Likelihood of Imprisonment of U.S. Residents Born in 2001

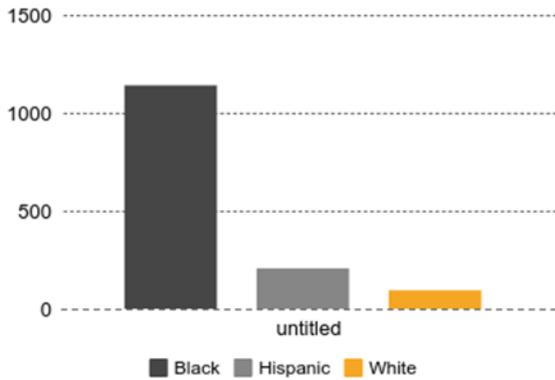


Source: Bonczar, T. (2003). *Prevalence of Imprisonment in the U.S. Population, 1974-2001*. Washington, DC: Bureau of Justice Statistics.



New Jersey leads the nation in racial disparity in incarceration. While the national average for black to white disparity is 5:1, New Jersey has the unenviable distinction of incarcerating Blacks at a rate of 12:1 (Sentencing Project, 2017).

### Imprisonment Rates in New Jersey by Race per 100,000

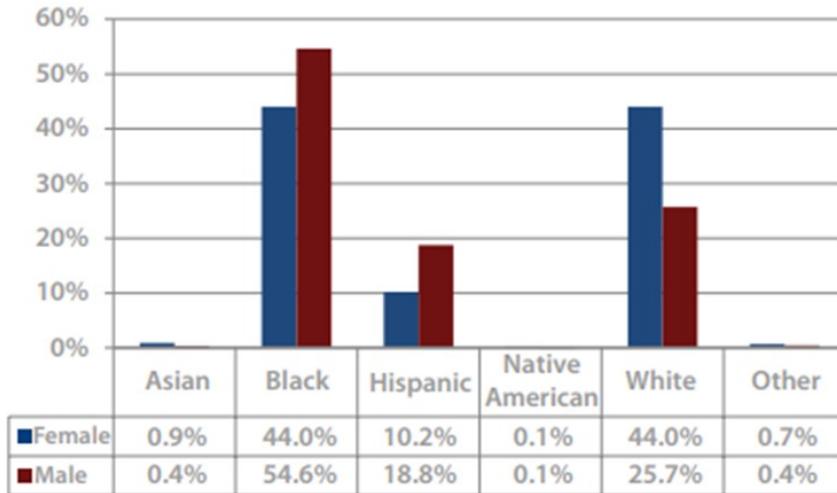


### Blacks are 12x More Likely to be Imprisoned than Whites



Data Source: Ashley, Nellis, *The Color of Justice: Racial and Ethnic Inequity in the Criminal Justice System, 2015* derived from the US Department of Justice, Office of Justice Programs, Bureau of Justice Statistics

The New Jersey Jail Population Analysis in March 2013 served as the catalyst for criminal justice and bail reform in the State. Sweeping reforms to criminal justice in the jail setting were enacted based on this powerful data. The report identified important demographics of New Jersey's jail population. As it relates to race, the report identified that *seventy-one percent* of inmates in New Jersey's jails were either Black or Hispanic (VanNostrand, 2013).



Racial disparity in the criminal justice system does not begin with incarceration. The ACLU of New Jersey's examination of racial disparities related to low level offenses in four New Jersey cities demonstrated a pattern of racially disparate enforcement practices (ACLU of NJ, 2015). Whereas the ACLU has reported that Blacks were three times more likely to be arrested than Whites for marijuana possession in New Jersey, a deeper dive into New Jersey's police practices resulted most times in higher disparities.

Data Source: CCIS Statewide dataset compiled on 10/03/2012  
(VanNostrand, 2013).

## System Change is Possible: Reducing Mass Incarceration

While considering solutions to complicated criminal justice issues such as the staggering amount of outstanding arrest warrants for low level offenses, court violations, and traffic matters, one can seek inspiration from the valiant efforts of advocates and innovators across the State of New Jersey. Whether the motivators for change are fiscal burdens or moral imperatives, collective efforts of committed professionals, active community members, and engaged legislators can create a momentum for social action and seismic shifts in social policy and practice. Consider two monumental changes in criminal justice practice: the reduction of the state prison population and the implementation of bail reform.

For decades, the United States has led the world in incarceration rates (Sentencing Project, 2017). The US has seen a 500% increase in the use of incarceration over the last 40 years. New Jersey was no different at the earliest stages of mass incarceration. From 1980 to 1999, New Jersey saw a 359% increase in its prison population, reaching a peak of nearly 32,000 inmates in 1999. However, due to a significant overcrowding issue and fiscal crisis, alternatives to incarceration were created by the New Jersey Department of Corrections. Through a public/private partnership with non-profit community providers, both the New Jersey Department of Corrections and the New Jersey State Parole Board created an infrastructure of residential community release programs and day reporting

centers for adult offenders that significantly impacted the prison population.

In 1998, 41% of prison admissions in New Jersey were incarcerated for technical parole violations, such as drug use or other non-criminal violations of their parole conditions. Without community alternatives, parole officers were quick to remand non-compliant offenders to the deepest, most expensive end of the system. Compounding this unsound practice was the unlikelihood that the offender would be able to access treatment or assistance for the underlying reason for his or her behavior.

In 2008, drug court expansion afforded New Jersey another alternative to combat mass incarceration. By 2016, the number of adults in state prison for drug offenses was reduced by half. With the introduction of community-based programs and the expansion of drug court alternatives, New Jersey achieved a 31% reduction in its prison population by 2014 (Sentencing Project, 2014). This decrease continues.

On January 31, 2017, New Jersey's prison population was less than 20,000 which represents a 37% reduction.

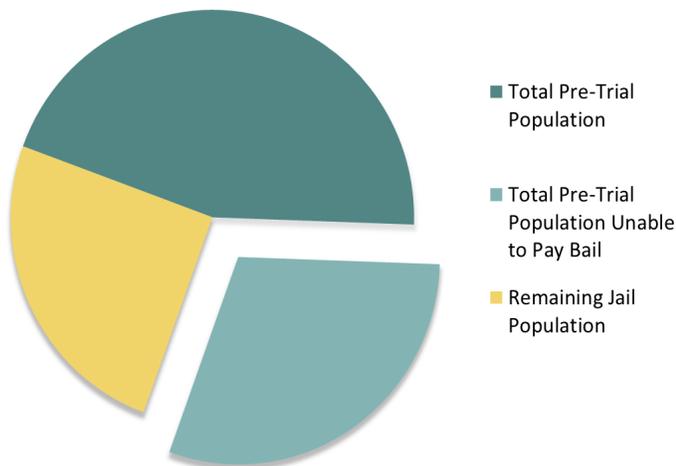


This refocus on reentry and rehabilitation not only ushered a massive decrease in the prison population, but a decrease in New Jersey's crime rate too (NJSP, 2014).

In March 2013, Luminosity and the Drug Policy Alliance partnered to release an analysis of New Jersey's jail population. On any given day, New Jersey jails held approximately 15,000 people. Jails are not

the same as prisons. Jails can hold inmates in custody who are sentenced to less than a year or who are awaiting trial. New Jersey was a state where all defendants had the right to be released on bail. Often, people languished in jail for low level offenses simply because they lacked the financial resources to be released on money bail. The jail population analysis released in 2013 confirmed that three-fourths of the individuals in jail were actually awaiting trial, and of those waiting for trial, nearly 40% of them were eligible to post bail but could not afford it. Twelve percent (12%) of the jail population was being held because they could not make bail of \$2,500 or less to secure their release. Most shockingly, it was revealed that approximately 800 inmates held in custody could have been released for \$500 or less. Individuals who had been indicted and were awaiting trial had been in custody on average 314 days, and more than half of the pretrial population was there for a non-violent offense.

**2013: NJ Jail Population (Pre-Bail Reform)**



On August 11, 2014, Governor Christie signed historic comprehensive bail reform legislation into law after considerable advocacy and public debate. On November 4, 2014, New Jersey voters passed Ballot Question #1 enacting reform that took effect January 1, 2017 rejecting the current status of jails as de facto debtor's prisons. Bail reform legislation changed the landscape of the criminal justice system by (1) declaring non-monetary pretrial release the default option for the majority of defendants; (2) establishing a pretrial services agency in each county to supervise low-risk individuals who are released pending trial; (3) mandating the use of a validated risk assessment tool when evaluating individuals for release; (4) permitting preventative detention of truly dangerous individuals; and (5) guaranteeing timelines for a speedy trial.

The passage of comprehensive bail reform legislation means New Jersey will see a fairer, safer and more cost-effective bail system by allowing the supervised pretrial release of low-risk individuals who do not threaten public safety. With this reform comes the hope to alternatively serve those individuals with chronic mental illness and substance abuse issues who frequently cycle through our county jails. Serving these individuals in the community not only saves taxpayer dollars but also helps them acquire the tools they need to permanently stay out of county jail.

Despite being a national model for bail reform, New Jersey's criminal justice reform fails to aid municipal court defendants. The sweeping reforms that protect individuals from reliance on cash bail and promote the timely hearing of defendants in superior court do not apply to defendants facing charges in municipal court. Local municipal courts address low-level offenses such as disorderly persons and shoplifting as well as traffic offenses like parking tickets and other moving violations.

## Money Matters

In a 2014 report, *Modern Day Debtor's Prisons*, the American Civil Liberty Union found that 80 -90% of individuals charged with felonies were poor. Despite the fact that debtors' prisons were abolished in 1833, recent practices of imprisoning the poor for failure to pay financial obligations have been proliferating. One hundred and fifty years after prison debtors' prisons were abolished, the poor continued to be imprisoned for failing to pay outstanding debt necessitating the US Supreme Court to rule in *Bearden v. Georgia* that debtors can only be incarcerated only if the act of not paying their debt or restitution was "willful". However, unfair court practices have been routinely discovered across the United States. These practices continue to burden poor defendants with insurmountable legal financial obligations and churn them through jails for failure to pay without regard for their ability to pay. The American Civil Liberties Union's report *In for A Penny* reviews the states of Louisiana, Ohio, Michigan, Georgia, and Washington and repeatedly finds low income individuals jailed for failing to keep up payments on legal financial obligations (LFOs) despite their inability to pay. The ACLU defines LFOs as not just fines, child support or restitution but court costs, monthly community supervision fees, interest associated with extended payment plans, paying for cost of incarceration that are often tacked on to criminal-justice involved people and the like.

The Brennan Center for Justice's *Criminal Justice Debt: A Barrier to Reentry* looked at fifteen different states with the highest prison populations that together account for 60% of all state filings. The report also found that "although debtors' prisons are illegal in all states, re-incarcerating individuals for failure to pay debt is in fact common in some- and in all states new paths to prison are emerging for those who owe criminal justice debt." The Brennan Report identified that all fifteen states imposed fees that attach upon conviction, and impose additional fees for parole, probation and other forms of supervision. The report additionally found that these states also had laws that authorized the imposition of jail or prison fees. Thirteen of the states extended probation for debt, and eight of the states suspended driver's licenses to punish for nonpayment. Alarming, many states impose fees for access to a public defender. Indigent clients without means to pay can and do go unrepresented, even in the face of imprisonment.



New Jersey is no different. Municipal court fines are a significant revenue source for many New Jersey municipalities. A review of New Jersey's adopted municipal budgets shows local towns, boroughs, and cities earning nearly \$200,000,000 in cash in 2016.

The top ten municipal court revenue generators included:

Municipality	County	Revenue Realized in Cash	Poverty Level	Average Household income
Jersey City	Hudson	\$13,592,007	19.4%	\$60,703
Newark City	Essex	\$10,508,223	29.1%	\$33,025
Hoboken City	Hudson	\$5,184,908	10.5%	\$118,479
Paterson City	Passaic	\$4,594,063	29.1%	\$34,042
Elizabeth City	Union	\$3,916,837	19%	\$43,831
New Brunswick City	Middlesex	\$3,139,431	36%	\$40,428
Union City	Hudson	\$2,666,809	24.3%	\$42,483
East Orange City	Essex	\$2,579,902	20.2%	\$38,403
Camden City	Camden	\$2,570,761	38.4%	\$26,214
Trenton City	Mercer	\$2,501,012	27.6%	\$34,412

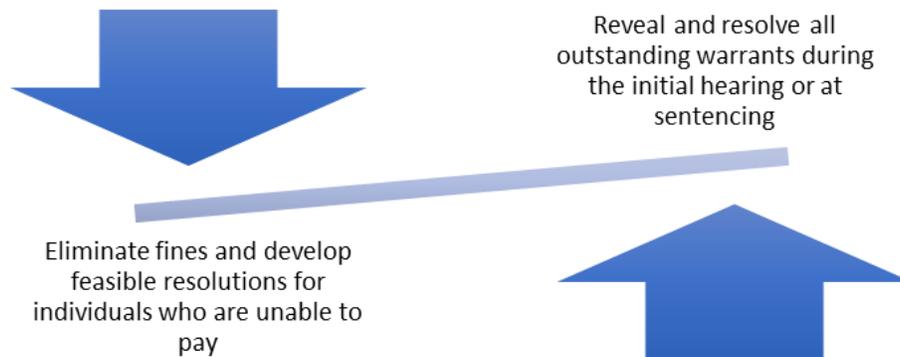
Those municipalities highlighted in red are also among the top 15 poorest cities in New Jersey. These ten (10) municipalities collected more than \$51 million in court fines; representing 26% of all revenue earned by municipal courts across the State. Failure to pay outstanding criminal justice debt often results with the issuance of arrest warrants. Arrest warrants and incarceration become the apparatus for municipal courts for fine collection. With fines serving as a significant revenue source, the impetus to reform municipal court practices may be difficult.

### Immediate Reform Needed

For those working in the criminal justice system, resolving outstanding arrest warrants for individuals who have served State prison sentences is unfortunately an entrenched problem. The preponderance of outstanding municipal court warrants is widespread amongst individuals returning home from State prison. Currently, outstanding municipal arrest warrants are typically handled once someone is released. Disappointingly, most times the resolution is the imposition of a payment plan. Adding financial burdens to the formerly incarcerated is a significant impediment to community reintegration and rehabilitation and can lead to re-incarceration.

In 2012, Rutgers University School of Criminal Justice facilitated a working group on warrants and detainers to address this significant obstacle in prisoner reentry. Representatives from the New Jersey Department of Corrections, Administrative Offices of the Courts, the Juvenile Justice Commission, Probation, Parole, the Prosecutor's Office, local and state law enforcement, county jail administrators, and community based organizations met to develop a sustainable model to resolve outstanding arrest warrants for individuals leaving State prison. Recommendations from law enforcement, the judiciary, and corrections were outlined. Unfortunately, the lack of coordinated leadership on this issue prevented the recommendations from being implemented.

### Key Working Group Recommendations:



Some municipal courts have permitted the use of existing statutes which include monetizing days of incarceration for individuals returning from state prison, up to \$50 a day per day served, as payment against municipal court fines. However, the municipal court judge has complete discretion whether to exercise this option. Indigent defendants are in a disadvantaged position when this option is left to the discretion of local municipal court judges in towns and cities dependent on court fines for revenue. Protections need to be in place for indigent defendants and proactive steps can be taken prior to state incarceration to resolve municipal court matters.

### Critical Steps:

- At sentencing in superior court, all municipal court matters should be revealed, resolved, and included in the defendant's judgment of conviction.
- Legislation or court rules must be created requiring the resolution of warrants.

Consistent with recommendations from the Brennan Center's Criminal Justice Tool Kit, New Jersey should consider creating and enforcing exemptions for indigence, eliminate collateral consequences related to criminal justice debt, and end incarceration and the use of arrest warrants for non-willful failure to pay (Patel & Philip, 2012).

### Conclusion:

New Jersey has made significant strides in ending mass incarceration and reforming bail practices. To promote effective prisoner reentry, attention must be paid to outstanding arrest warrants and the criminalization of poverty. Evaluating municipal court practices that disproportionately penalize the poor and incarcerate individuals without financial means is the next logical step to bail reform. An immediate step that would impact more than 10,000 individuals leaving State prison each year would be to require all municipal court matters be revealed and resolved at sentencing in superior court. The meaningful impact on men and women who have served their sentence and are attempting to move their lives forward in a productive way would be immeasurable. Acknowledging the roles that structural racism and poverty play, these reforms take critical steps forward in improving faith in the criminal justice system.



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