



New Jersey Courts

Independence • Integrity • Fairness • Quality Service

# New Jersey Overview of Criminal Justice Reform

National Conference of State Legislatures

November 2023

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# Criminal Justice Reform – Fundamental Pretrial Concepts

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# Fundamental Pretrial Concepts

- No system of pretrial release can guarantee that a pretrial defendant will remain arrest-free and appear in court with 100% certainty.
- Risk-based pretrial release systems can deliver better pretrial outcomes than monetary systems by:
  - detaining the highest risk defendants when permitted, while
  - releasing low to moderate risk defendants using the least restrictive conditions necessary.
- For pretrial purposes, defendants are successful if they:
  - Appear for appearance-required court events; and
  - Remain arrest free while on pretrial release

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# Fundamental Pretrial Concepts

- New Jersey's path to transforming its pretrial release process:
  - Passage of a Constitutional Amendment
  - Passage of a companion Criminal Justice Reform statute
  - Use of a risk assessment and risk management tools
    - Public Safety Assessment (PSA) and
    - Decision Making Framework (DMF)



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# Fundamental Pretrial Concepts

- Criminal Justice Reform would not have occurred in New Jersey without the cooperation of all **three branches of government**.
- Successful implementation of the program in January 2017 was made possible through the significant engagement of **criminal justice stakeholders**
  - The Attorney General, County Prosecutors, and the Public Defender.
    - *NOTE* – N.J. is unique in that every defendant at their first appearance is represented by the Office of the Public Defender.
- **Sustained engagement** between all three branches of government and criminal justice system stakeholders.

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# Fundamental Pretrial Concepts

CJR has **continued to evolve** since implementation.

- In May of 2017, the Supreme Court approved amendments to the DMF to address defendants rearrested while on pretrial release.
- In 2022, the law was amended to require that pretrial services issue a recommendation of no release for specific gun offenses, which may constitute prima facie evidence sufficient to overcome the presumption of release.

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# Fundamental Pretrial Concepts

- In 2023, the law was amended to require that pretrial services issue a recommendation of no release for specific automobile theft offenses, which may constitute prima facie evidence sufficient to overcome the presumption of release.
- In June 2023, the Joint Committee on Criminal Justice, which included stakeholders and staff from other branches of government, issued a report providing recommendations to continue to evolve and improve CJR.
  - [Report of the Reconvened Joint Committee on Criminal Justice \(njcourts.gov\)](https://njcourts.gov)

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# Constitutional Amendment Statute & CJR Process



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# Constitutional Amendment

- For a risk-based pretrial system to be implemented in New Jersey, a state constitutional amendment was necessary.
- In 2014, a ballot question was added to remove bail language from the constitution, and instead allow defendants to be detained based on dangerousness. It also permitted the Legislature to enact laws related to pretrial release.
- N.J. voters passed the amendment with 62% voting in favor

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# Constitutional Amendment

- New Jersey's Constitutional provision:
  - All persons shall, before conviction, be eligible for pretrial release. **Pretrial release may be denied to a person if the court finds that no amount of monetary bail, non-monetary conditions of pretrial release, or combination of monetary bail and non-monetary conditions would reasonably assure the person's appearance in court when required, or protect the safety of any other person or the community, or prevent the person from obstructing or attempting to obstruct the criminal justice process.** It shall be lawful for the Legislature to establish by law procedures, terms, and conditions applicable to pretrial release and the denial thereof authorized under this provision. N.J. Const., Art. I, Para. 11.

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# Criminal Justice Reform Statute

- New Jersey's Criminal Justice Reform Act (CJRA) was effective January 1, 2017.
- In the CJRA's first section (N.J.S.A. 2A:162-15), the Legislature announced its intent that the Act be

"...liberally construed to effectuate the purpose of **primarily relying upon pretrial release by non-monetary means** to reasonably assure an eligible defendant's appearance in court when required, **the protection of the safety of any other person or the community**, that the eligible defendant will not obstruct or attempt to obstruct the criminal justice process, and that the eligible defendant will comply with all conditions of release...."

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# Criminal Justice Reform Statute

Nonmonetary conditions of release pursuant to 2A:162-17b(2):

- a. Remain in the custody of third party
- b. Maintain or seek employment
- c. Maintain or commence education
- d. Restrictions on personal associations, place of abode or travel
- e. Report regularly to Pretrial Services or another agency
- f. Curfew
- g. Refrain from possessing firearms or other weapons
- h. Refrain from use of illegal drugs or excessive use of alcohol
- i. Undergo available medical, psychological or psychiatric treatment, including drug / alcohol
- j. Return to custody for specified hours following release for limited purposes
- k. Home supervision with or without electronic monitoring
- l. Any other conditions that is necessary.

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# Criminal Justice Reform Process

- The complaint-summons / complaint-warrant decision is a critical point.
  - A *preliminary* risk assessment is used by law enforcement and the judge hearing probable cause to inform this decision.
- If ***summons***, the defendant is automatically released on their own recognizance
- If ***warrant***, the eligible defendant must be temporarily detained at the county jail

# OVERVIEW OF COMPLAINT-WARRANT PROCESS

- Law enforcement contacts and may bring charges against the defendant
- Police fingerprint and run a Preliminary PSA at the time of arrest



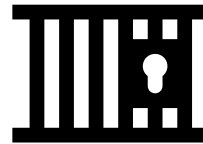
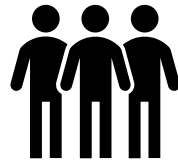
Preliminary PSA

Law enforcement may either:



Seek a Warrant – (transported to county jail)

Defendant is subject to CJR and pretrial monitoring



A defendant may need to appear in:

Municipal Court

Criminal Court

Family Court



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# Criminal Justice Reform Process

- For defendants issued a complaint-warrant and taken to jail, the court must make a pretrial release decision no later than **48 hours** after a defendant's commitment to the jail. N.J.S.A. 2A:162-17.
- Release decisions are made 6 days a week in New Jersey.
- A defendant will be held longer than 48 hours if a prosecutor requests detention.

# CRIMINAL JUSTICE REFORM (CJR) WORKFLOW

Individual is arrested on a complaint *warrant* and temporarily committed to the county jail



Public Safety Assessment Completed by Pretrial Staff

First Appearance / Release Hearing

Motion For Detention

Held up to 24-48 hours of being taken to county jail

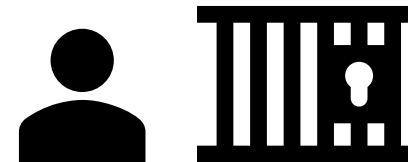
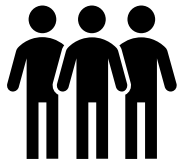
Detention Hearing within 3 business days

Ordered Released ROR

Ordered Released w/ Conditions

Withdrawn or Denied

Granted Ordered Detained



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# Criminal Justice Reform Process

- A judge is required to consider the recommendation of Pretrial Services. N.J.S.A. 2A:162-16b(1); 2A:162-20(f).
- Pretrial release conditions must be the **least restrictive** necessary to achieve the goals of public safety and appearance in court. N.J.S.A. 2A:162-17(b)(2).
- A judge must consider the following hierarchy for release:
  - Release on Own Recognizance
  - Nonmonetary conditions
  - Monetary conditions
  - Combination of monetary and nonmonetary conditions
- Monetary bail must be limited to the question of flight-risk, and not used as a substitute for detention. N.J.S.A. 2A:162-17(c)(1).

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# Criminal Justice Reform Process

If a judge is not satisfied that the defendant can be safely released, the judge may order the defendant detained pending trial only where:

- The defendant has been charged with a qualifying offense. N.J.S.A. 2A:162-19(a).
  - A felony or misdemeanor involving domestic violence.
- The prosecutor has filed a motion for pretrial detention. N.J.S.A. 2A:162-18.
  - The eligible defendant has the right to counsel, right to present witnesses, cross examine, and present information by proffer or otherwise.
- The judge makes a finding by clear and convincing evidence and fully articulates their reasons. 2A:162-23(a)(2); N.J.S.A. 2A:162-21.

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Evidence Based Tools:  
Public Safety Assessment (PSA)  
Decision Making Framework (DMF)

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# Public Safety Assessment (PSA)

- The PSA in New Jersey is fully automated, pulling conviction and court history from Judiciary systems.
  - Pretrial staff check the PSA before it is provided to a judge and attorneys.
- The PSA is transparent – it is made immediately available to judges, prosecutors, defense attorneys and their clients.
- The **PSA is *not* the decision**. It is a *tool* providing information and risk measures *to be used* by the decision maker and stakeholders.



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# Public Safety Assessment (PSA)

## PSA RISK FACTORS:

1. Age at current arrest
2. Current violent offense
  - 2a. Current violent offense & 20 years old or younger
3. Pending charge at the time of the offense
4. Prior Disorderly Persons conviction
5. Prior Indictable Conviction
  - 5a. Prior conviction
6. Prior violent conviction
7. Prior failure to appear pretrial in past 2 years
8. Prior failure to appear older than 2 years
9. Prior sentence to incarceration

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# Decision Making Framework (DMF)

## Decision Making Framework (DMF)

- Reflects this jurisdiction's risk tolerance and pretrial resources.
- Ensures consistent pretrial recommendations statewide.
- Considers the PSA results and the current charge
- Identifies a proposed release/detention recommendation designed to manage risk in the *most effective* manner

# Decision Making Framework

## Pretrial Recommendations / Monitoring Levels:

Monitoring Level	Phone Contacts	Face to Face Contacts	Additional Conditions of Monitoring Permitted	Home Detention or Electronic Monitoring
ROR	None	None	Limited*	No
PML 1	1 per month	None	Yes	No
PML 2	1 per month	1 per month	Yes	No
PML 3	1 every other week	1 every other week	Yes	No
PML 3+	1 every other week	1 every other week	Yes	Yes
HD/EM				

*\* No contact with Victim and No Contact with Witnesses permitted for all levels including ROR*

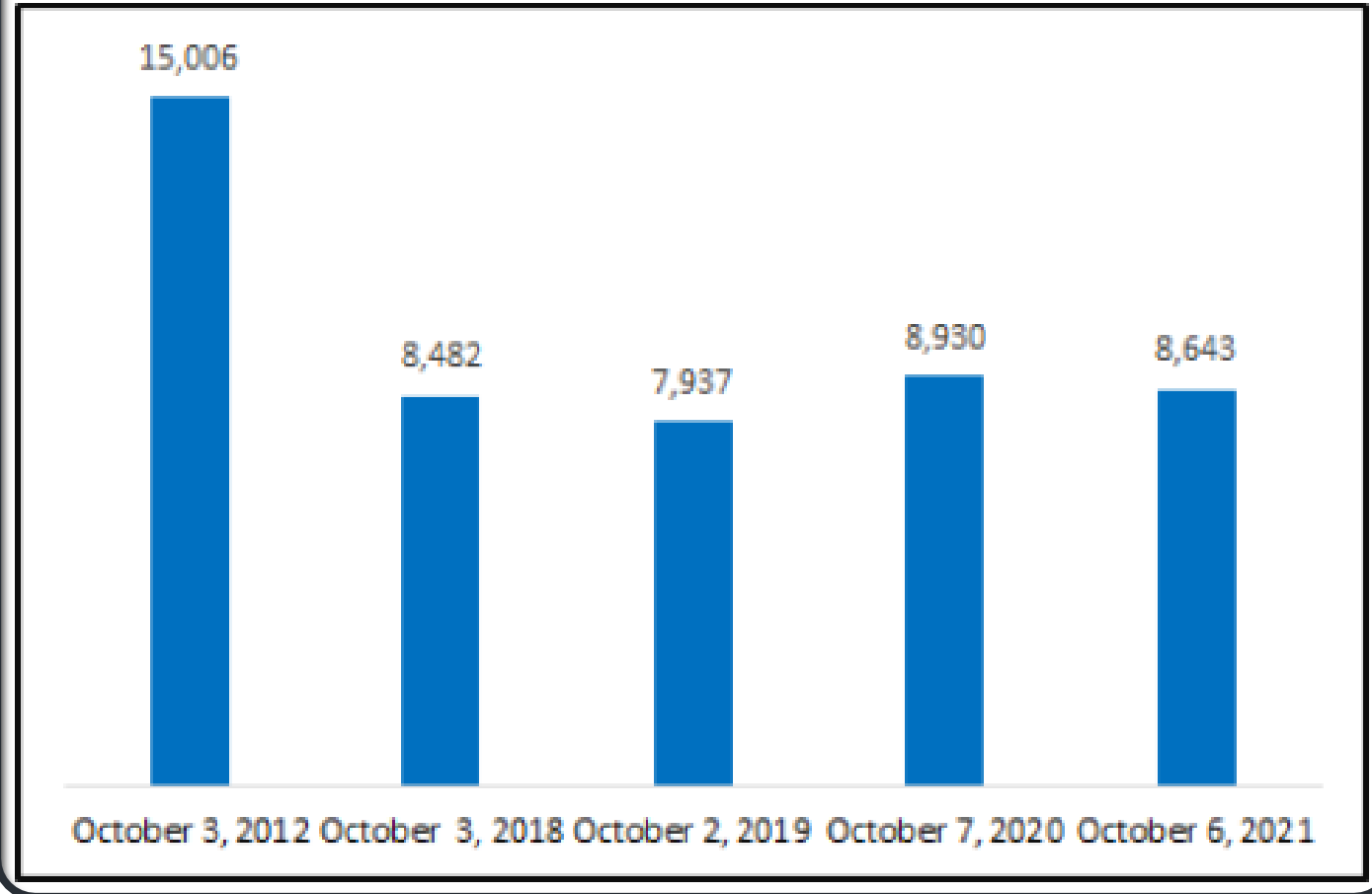
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# Criminal Justice Reform Data

# Reports to the Governor and Legislature

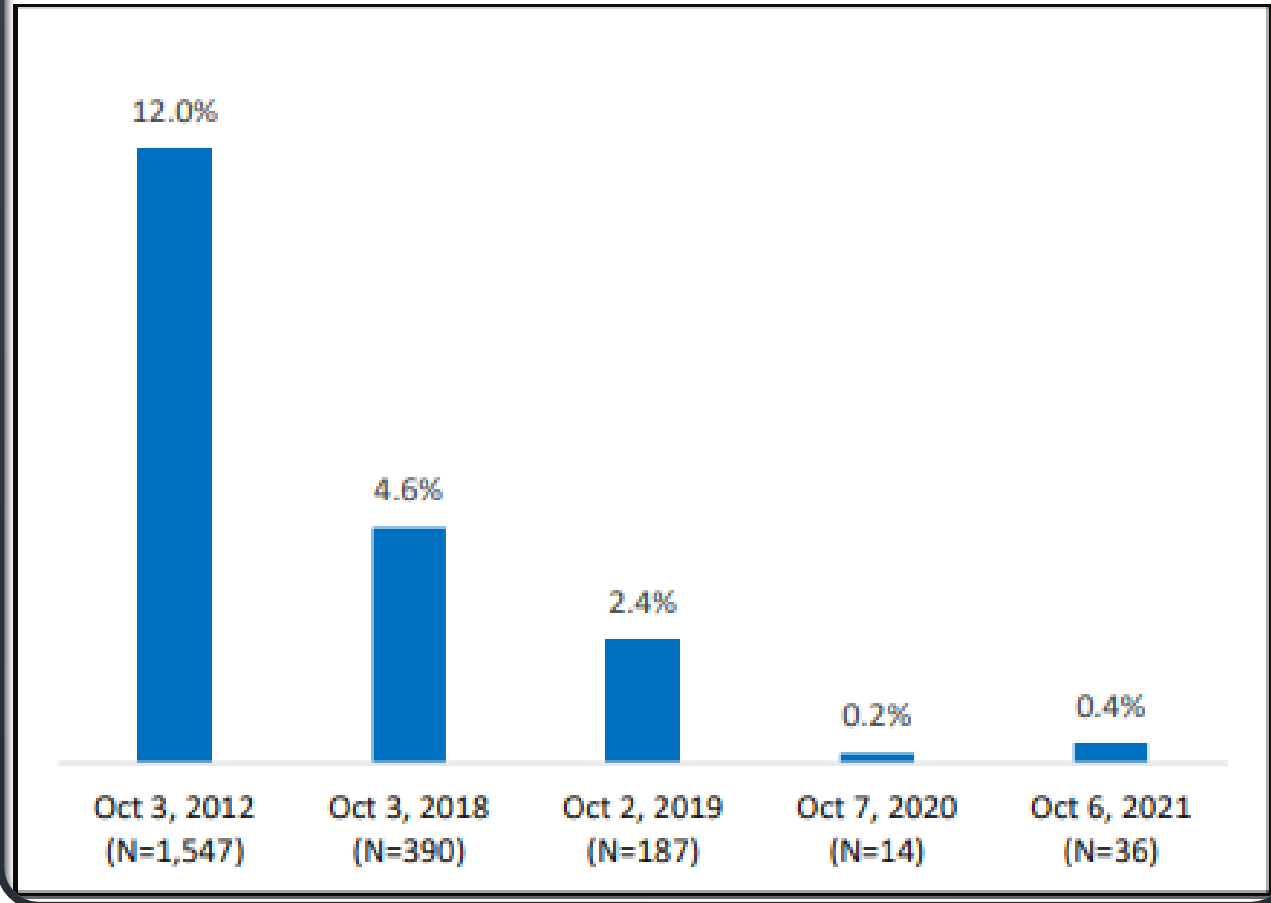
Fig. 9. New Jersey Jail Population (One-Day Snapshot)



New Jersey Jail Population Snapshot

# Reports to the Governor and Legislature

**Fig. 10. Defendants Held on Bail of \$2,500 or Less**

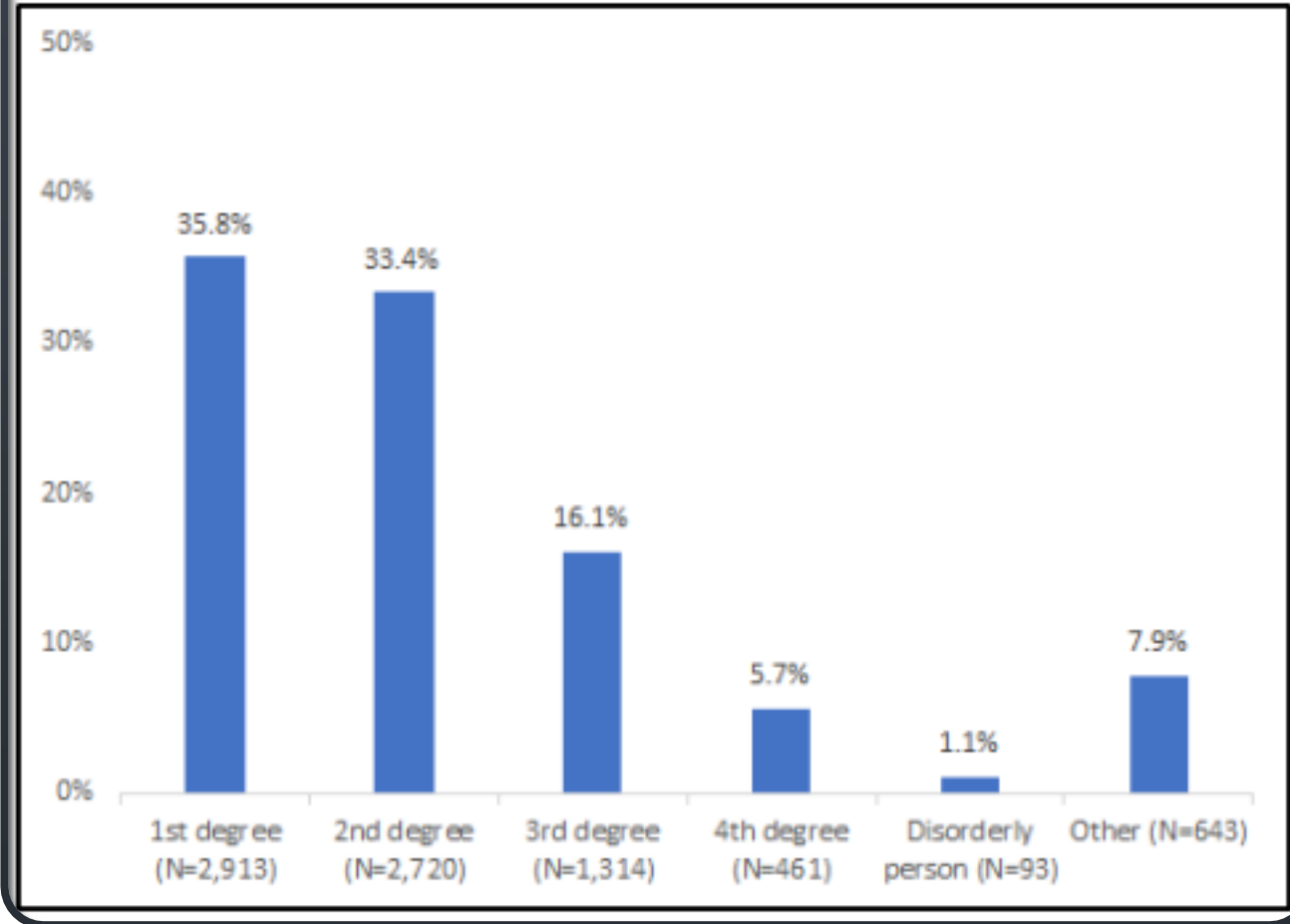


Defendants Held on Low Bail



# Reports to the Governor and Legislature

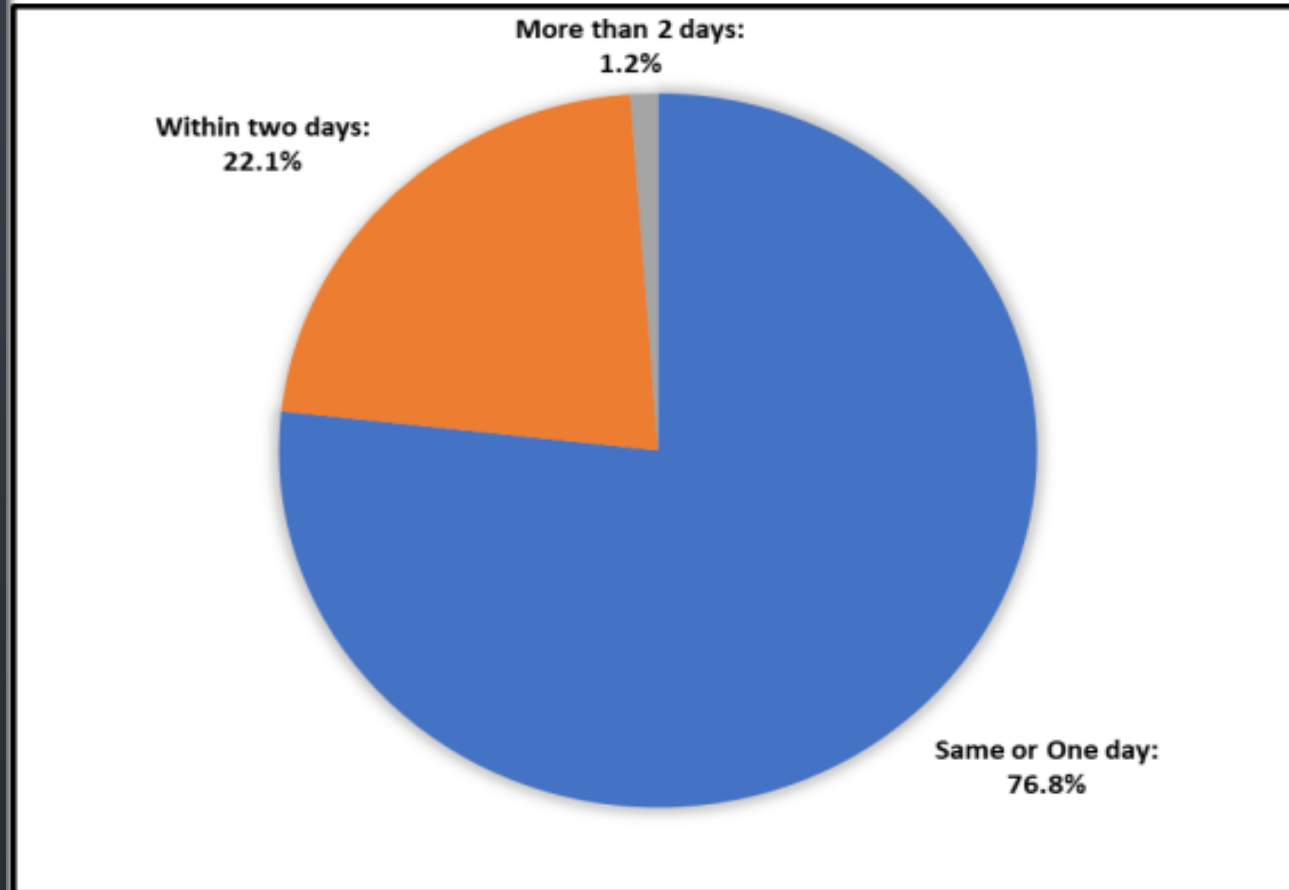
Fig. 12. Primary Charge Severity for all Defendants in Jail in 2021



Jail Population Charge Severity

# Reports to the Governor and Legislature

Fig. 18. Time to Initial Release after Arrest and Commitment to Jail, 2021

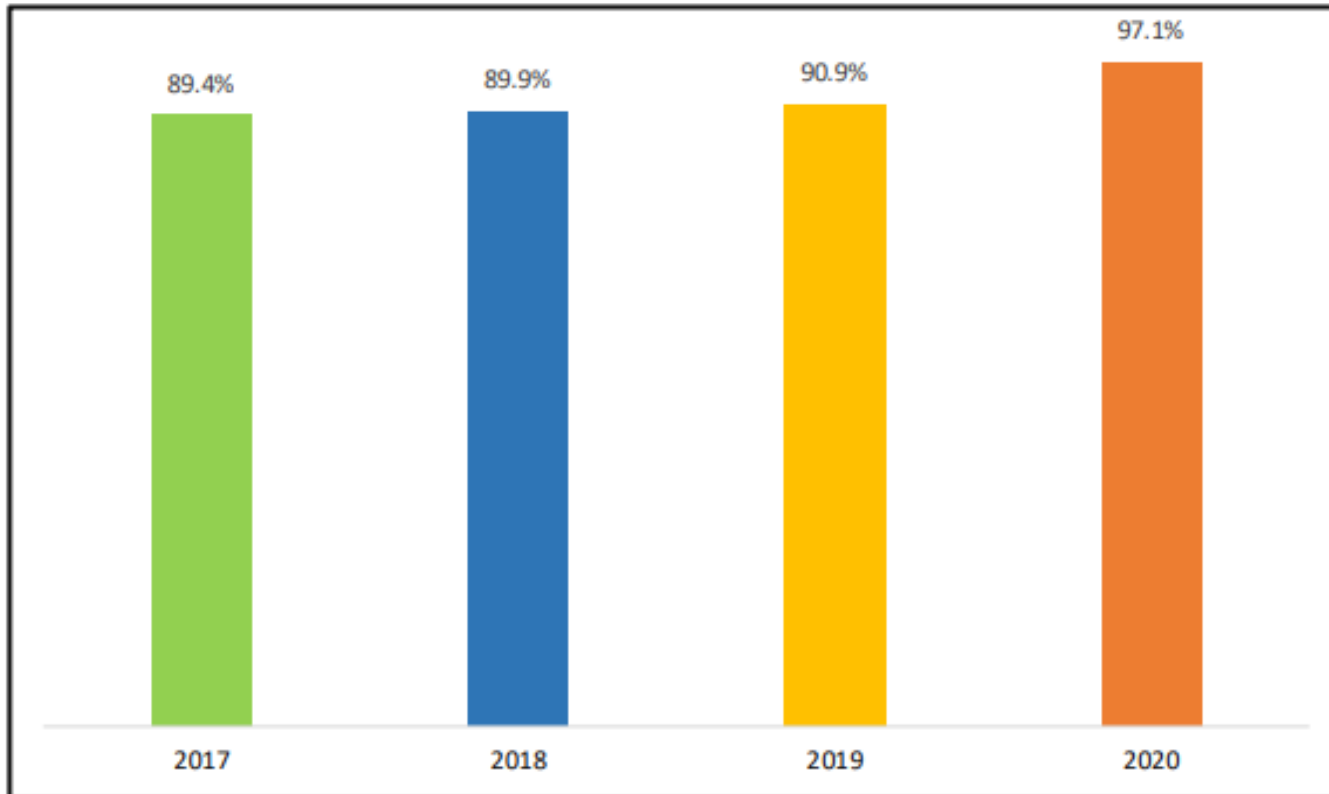


Note: This figure only includes CJR-eligible defendants where no detention motion was filed.

Time to Initial Release –  
Where no motion for detention is filed, more than 75% of defendants are released from jail within 24 hours.

# Reports to the Governor and Legislature

Fig. 6. Court Appearance Rate for All Defendants During the Pretrial Period\*

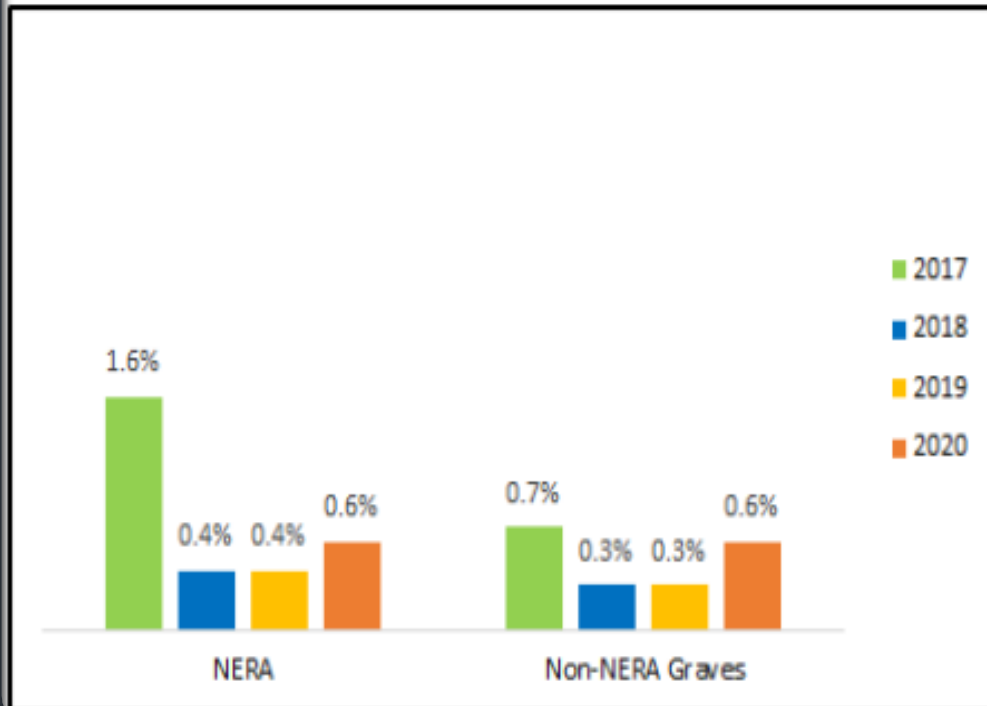


Pretrial Court Appearance Rates

By comparison, the pretrial court appearance rate for 2014 was 92.7%

# Reports to the Governor and Legislature

Fig. 5. Percentage of Defendants Charged with NERA or Non-NERA Graves Crimes While On Pretrial Release



Pretrial Defendants Rearrested for serious offenses while on release.

NERA is a sentencing provision that requires a defendant to serve 85% of their sentence.

The Graves Act is a sentencing provision that sets a mandatory minimum sentence for certain gun offenses.

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# CJR Public Information

- The NJ Judiciary has a web site dedicated to Criminal Justice Reform. It includes:
  - Annual progress reports to the Governor and Legislature since 2015
  - The 2023 Report of the Joint Committee on Criminal Justice
  - PSA Risk Factor Definitions for New Jersey
  - The Pretrial Recommendation Decision Making Framework (DMF)
  - Statistical reports since 2017
  - Videos and other information related to New Jersey's CJR initiative
- <https://www.njcourts.gov/public/concerns/criminal-justice-reform>

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# Questions?