



CAN BAIL REFORM IMPROVE RACIAL EQUITY AND PERCEPTIONS OF FAIRNESS IN PRETRIAL SYSTEMS?

Impact and Interview Findings from a Study of
New Jersey's 2017 Criminal Justice Reform

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OVERVIEW

On January 1, 2017, the State of New Jersey implemented Criminal Justice Reform (CJR), a sweeping set of changes to its criminal legal system. With these reforms, the state shifted from a system that relied on money bail to a system that virtually eliminated the use of money bail and uses a risk-assessment tool that informs decision-making by generating scores based on an individual's assessed risk of failing to appear at future court hearings and committing additional crimes if released. Additionally, CJR granted courts the option to detain people without bail until their cases are disposed, established a pretrial monitoring program, and instituted speedy-trial laws that impose time limits for case processing. The state's goals were to improve fairness and reduce unnecessary pretrial detention while protecting public safety and ensuring that people continue to show up to their court hearings. While improving racial equity was not an explicit goal of the reforms, racial equity may be affected by reducing pretrial detention and eliminating the use of money bail.

With support from the Robert Wood Johnson Foundation's Policies for Action Program, the New Jersey Criminal Justice Reform Advancing Racial Equity (NJ CARE) Study sought to assess racial equity and perceptions of fairness in New Jersey's criminal legal system after the implementation of the reforms to determine whether the reforms improved racial equity in the state. Furthermore, the study explored whether individuals who were navigating the pretrial system as defendants perceived it as fair. Their experiences and the reforms' effects on racial disparities reveal valuable lessons about the effects of bail reform efforts on racial equity. The study employed a mixed-methods approach that included quantitative and qualitative methods, as well as participatory elements.

The quantitative analysis found that CJR had a net positive impact on some outcomes for both Black people and White people. More people were issued a summons (rather than a warrant) and were immediately released following arrest, and people were released from jail more quickly following an arrest. Yet despite these positive impacts, racial disparities persisted throughout the pretrial system, to varying degrees. For outcomes that had larger disparities before CJR, there was no meaningful reduction in disparities. The largest disparities are seen at the front end of the pretrial system, in arrest rates and initial jail bookings. For the qualitative analysis, interviewees—who had experience navigating the state's pretrial system as defendants—said that CJR's elimination of money bail has improved the fairness of the system. Yet they also said the criminal legal system should consider each person's voice and circumstances, treat each person with respect, be transparent, assign the least restrictive release conditions when possible, and employ diverse staff members.

Taken together, the findings suggest that broad bail reform policies can reduce the footprint of criminal legal system involvement, but they may not be a salve for issues of equity broadly and racial disparities specifically. There are several potential approaches to improve racial equity, including programs or processes that reduce people's initial contact with the legal system, incorporate procedural justice-informed techniques into policing to improve police-community relationships, elevate the voices of individuals who have experience as defendants, enhance the criminal legal system's transparency and communication, employ the least restrictive conditions of release and offer supportive services, engage prosecutors in reform efforts, and employ a more diverse staff. As a next step, these potential approaches should be rigorously studied.

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EXECUTIVE SUMMARY

In a completely equitable society, individuals would not be any more or less likely to experience burdens during their interactions with societal systems just because of their race. However, historically explicit and implicit practices and policies across the United States reinforce racial inequity, and these racial disparities are observed in many social systems, including the criminal legal system.¹ Racial disparities in the pretrial system — that is, the period from the point of arrest to a case’s resolution in a verdict, plea deal, or dismissal — have broad equity implications. Spending time in jail — sometimes even just a few days — is associated with a variety of adverse effects on physical and mental health, as well as on social determinants of health like employment, housing, and family ties.²

Jurisdictions across the country have made efforts to reduce their use of pretrial detention and improve perceptions of the system’s fairness through different types of reforms — most notably by reducing their use of money bail or using actuarial risk-assessment tools to guide release decision-making.³ However, relatively little is known about the effects of these reforms.

1. Wayne J. Riley, “Health Disparities: Gaps in Access, Quality, and Affordability of Medical Care,” *Transactions of the American Clinical and Climatological Association* 123 (2012): 167–174; Danyelle Solomon, Connor Maxwell, and Abril Castro, *Systematic Inequality: Displacement, Exclusion, and Segregation* (Washington, DC: Center for American Progress, 2019); Cristobal de Brey, Lauren Musu, Joel McFarland, Sidney Wilkinson-Flicker, Melissa Diliberti, Anlan Zhang, Claire Branstetter, and Xiaolei Wang, *Status and Trends in the Education of Racial and Ethnic Groups 2018* (Washington, DC: National Center for Education Statistics, 2019); Robert Manduca, “Income Inequality and the Persistence of Racial Economic Disparities,” *Sociological Science* 5 (2018): 182–205.
2. Amanda Geller, Jeffrey Fagan, Tom Tyler, and Bruce G. Link, “Aggressive Policing and the Mental Health of Young Urban Men,” *American Journal of Public Health* 104, 12 (2014): 2,321–2,327; Naomi F. Sugie and Kristin Turney, “Beyond Incarceration: Criminal Justice Contact and Mental Health,” *American Sociological Review* 82, 4 (2017): 719–743; Will Dobbie, Jacob Goldin, and Crystal S. Yang, “The Effects of Pretrial Detention on Conviction, Future Crime, and Employment: Evidence from Randomly Assigned Judges,” *American Economic Review* 108, 2 (2018): 201–240; Christopher T. Lowenkamp, Marie VanNostrand, and Alexander M. Holsinger, *The Hidden Costs of Pretrial Detention* (Houston, TX: Laura and John Arnold Foundation, 2013); Alexander M. Holsinger and Kristi Holsinger, “Analyzing Bond Supervision Survey Data: The Effects of Pretrial Detention on Self-Reported Outcomes,” *Federal Probation* 82, 2 (2018): 39–56; Devah Pager, “The Mark of a Criminal Record,” *American Journal of Sociology* 108, 5 (2003): 937–975; Lauren Brinkley-Rubinstein, “Incarceration as a Catalyst for Worsening Health,” *Health and Justice* 1, 3 (2013). For an overview of existing health disparities, see National Academies of Sciences, Engineering, and Medicine, 57–97 in Baciu, Negussie, Geller and Weinstein (eds.), *Communities in Action: Pathways to Health Equity* (Washington, DC: The National Academies Press, 2017). See also Christopher T. Lowenkamp, *The Hidden Costs of Pretrial Detention Revisited* (Hudson, OH: Core Correctional Solutions, 2022).
3. Risk-assessment tools are validated, actuarial tools that use factors such as criminal history and community ties to estimate an individual’s probability of appearing in court and probability of avoiding a new arrest during the pretrial period. Such tools and their accompanying, jurisdiction-specific decision matrices (which produce release-condition recommendations based on the results of the tool and local policies) are widely used by jurisdictions across the United States to guide release-condition decision-making.

On January 1, 2017, the State of New Jersey implemented Criminal Justice Reform (CJR), a sweeping set of changes to its pretrial legal system that employed both approaches. With these reforms, the state shifted from a system that relied on money bail to a system that has virtually eliminated the use of money bail. The new system uses a risk-assessment tool — the Public Safety Assessment, or PSA — that informs decision-making by generating scores based on an accused individual’s assessed risk of failing to appear at future court hearings and committing additional crimes if released. Additionally, CJR established the possibility of pretrial detention without bail, established a pretrial monitoring program, and instituted speedy-trial laws that impose time limits for case processing. The state’s goals were to improve fairness throughout its pretrial system and reduce unnecessary pretrial detention while protecting public safety and ensuring that people continue to show up to their court hearings. While improving racial equity was not an explicit goal of the reforms, racial equity issues may be affected by reducing pretrial detention and eliminating the use of money bail.

With support from the Robert Wood Johnson Foundation’s Policies for Action program, MDRC conducted the New Jersey Criminal Justice Reform Advancing Racial Equity (NJ CARE) Study. The study sought to assess racial equity and perceptions of fairness in New Jersey’s criminal legal system after the implementation of the reforms to determine whether the reforms improved racial equity in the state. Any effects that CJR might have on racial disparities in pretrial system involvement would in turn have major implications for the physical and mental health and well-being of the affected populations, given the established link between legal system involvement and health. Furthermore, the study also explored whether individuals who experienced the pretrial system as defendants after the reforms perceived it as fair. Their experiences and the reforms’ effects on racial disparities reveal valuable lessons about the effects of bail reform efforts on racial equity.

The study employed quantitative and qualitative methods, as well as participatory approaches, to answer these questions. This report shares the study’s findings.

RESEARCH QUESTIONS AND STUDY DESIGN

To examine the effects of CJR on racial equity, the study sought to answer the following research questions:

1. What is the impact of New Jersey’s reforms on arrest decisions, pretrial detention, and case disposition for different racial groups? What is the resulting impact on racial disparities?
2. How did the reforms’ effects on racial disparities in pretrial processes and outcomes vary between New Jersey’s 21 counties?
3. What did the experiences of people who were accused of a crime look like within New Jersey’s pretrial system after CJR went into effect? Did those experiences with the pretrial system affect their health and well-being, and if so, how?

4. What recommendations do people who were accused of a crime have for improving perceptions of fairness and equity in New Jersey’s pretrial system?

A quasi-experimental impact analysis with an interrupted time series design was used to answer the first two research questions. The data used in the impact analysis were provided by the New Jersey Administrative Office of the Courts and consist of 675,319 arrest events in New Jersey between January 2014 (three years before the implementation of CJR in January 2017) and October 2018. Together, Black individuals and White individuals comprised almost all of the cases in the data at 38 percent and 54 percent, respectively; they are the focus of the analysis. One limitation of the data is that the data did not include information on ethnicity.

Qualitative interviews with people who had experience as defendants in New Jersey were used to address the third and fourth research questions. This analysis draws from in-depth interviews with 13 individuals who had been arrested or had a court case after CJR went into effect. The interviews focused on their personal experiences and assessments of the current system, their vision of and recommendations for a more racially equitable system, and the effects of pretrial involvement on their health and well-being. These interviews are not meant to be representative of the larger population of people who interact with the pretrial system in New Jersey. Instead, the goal of the interviews was to show the experiences of some people in a deep and meaningful way, provide case studies that can shed light on the current pretrial system, and identify opportunities for change.

NJ CARE used two participatory research methods. One of those methods was Photovoice. The participants (called photographers) took photographs and discussed them in a group with the research team. For this study, the photographers — who had experience as defendants in New Jersey — took photos that showed how their health and well-being were impacted by their experiences in the pretrial system. Photovoice submissions are available in a virtual gallery.⁴

Additionally, the study was guided from its launch by an advisory board of individuals with lived experience in New Jersey’s criminal legal system. The advisory board provided guidance and help with the design of the qualitative study, the interpretation of the findings from the impact study and interviews, and the dissemination of the findings in this report.

FINDINGS

Findings from the impact study and the qualitative interviews include the following:

- **CJR had a net positive impact on both Black people and White people’s likelihood of being immediately released following arrest on a summons, rather than being booked into jail on a warrant — and on how quickly they were released from jail following an arrest.**

4. For the more information, and to view the full Photovoice virtual gallery, see Erika B. Lewy and Kyla Wasserman, *“Once You’re Arrested, You Lose So Much”: A Photovoice Study on the Pretrial Experience in New Jersey* (New York: MDRC, 2024).

Police officers have some discretion in processing an arrest event as either a summons or a warrant. A warrant represents a more serious case type and requires that the accused individual is taken into custody. A summons, on the other hand, guarantees that the individual is immediately released to the community.

The impact study found that CJR led to some noteworthy improvements that were experienced similarly by both Black people and White people. Specifically, a greater share of people (both Black and White) were issued summonses instead of warrants at the point of arrest than what was predicted had the reforms not taken place. This outcome represents a “benefit” for both groups, as summonses are a less onerous case processing type.

Individuals from both racial groups were released from jail more quickly after the reforms went into effect – meaning that there were fewer people of both racial groups booked in jail for long periods of time following arrest. This is also a net positive for both groups.

- **Racial disparities persist in the pretrial system to varying degrees. The largest disparities appear to occur at the front end of the system (for example, in rates of arrest and initial jail bookings).**

While the reforms led to a reduced use of warrants and faster releases from jail for both Black and White groups, they did not meaningfully reduce disparities between the groups on these measures. After CJR, Black people are still more likely than White people to be arrested on a warrant and held in jail .

Disparities were particularly large when it came to arrest rates between the two groups. Before CJR, nearly 5 out of every 100 Black people were arrested in a year, while about 1 out of every 100 White people were arrested in a year.⁵ For each of the prereform years, the number of arrests was about 3.6 times greater among Black people than White people. In the year after the introduction of CJR, arrest rates increased slightly for both groups, but the Black-to-White ratio remained similar (3.5).

Disparities before and after CJR were smaller when it came to the length of time from arrest to case disposition and in the rate at which plea deals were taken. However, both groups were slightly more likely to take a plea deal after CJR, and Black people had slightly longer lengths of time to disposition, compared with what would be expected in the absence of the reforms.

- **Impacts on racial disparities did not vary considerably between New Jersey’s 21 counties.**

In addition to assessing statewide impacts of the reforms, county-level analyses were conducted to assess how effects may have varied between New Jersey’s 21 counties. These analyses were done to determine if any counties experienced especially large reductions

5. These rates may be slightly overestimated. A person may have been arrested more than once in a year, but each of that person’s arrest events (if they occurred on different days) would be counted in these rates per 100 people.

in disparities in key outcomes and therefore might show how the reforms could be implemented to improve equity and shed light on the mechanisms that led to impacts. However, the impacts on disparities did not vary considerably between counties.

- **The interviewees in the qualitative study, who had experience navigating the state’s post-CJR pretrial system as defendants, said that CJR’s elimination of money bail has improved the fairness of the system. Yet they also pointed to a need for a legal system that considers each person’s voice and circumstances, treats each person with respect, is transparent and easier to navigate, uses the least restrictive release conditions when possible, and employs staff members who better reflect the diversity of the populations they serve.**

Interviewees prefer CJR to money bail, but they expressed concern that challenging conditions in jail, detention without the option for release, and lengthy timelines to disposition could lead individuals to accept plea deals that they might not have taken otherwise.

Not having a chance to share their perspective played a large role in interviewees’ perceptions of the New Jersey pretrial system’s fairness. Interviewees felt particularly silenced during the risk-assessment processes and initial hearings. They said that approaches that promote opportunities for people who have been accused of a crime to tell their side of the story could make pretrial processes feel fairer to them.

Interviewees also felt that the risk-assessment tool placed too much emphasis on their history with the legal system and that a more holistic approach would be a fairer and more accurate basis for decisions about detention and monitoring. Most pretrial risk-assessment tools in use today, including the PSA, draw heavily on criminal history with the goal of standardizing the process to assess an individual’s risk and making the process more evidence-driven.⁶ Interviewees thought that the tool offered a limited view of their character, and they questioned the fairness of decisions made with the PSA, such as decisions about detention or release conditions.

Most interviewees felt that pretrial monitoring requirements, especially electronic monitoring, were onerous, stigmatizing, and destabilizing. Interviewees who had restrictive monitoring requirements generally felt that they were being treated unfairly during the pretrial process, which suggests that there is a relationship between monitoring levels and perceptions of fairness. Interviewees recommended a more supportive approach to supervision that focused on providing people with services.

Pretrial processes, timelines, and decisions were often unclear to interviewees. This opacity contributed to interviewees’ mistrust of the pretrial system. They worried that the decisions

6. Advancing Pretrial Policy and Research, “About the Public Safety Assessment” (website: <https://advancingpretrial.org/psa/about/>, n.d.).

that were made about their cases were based on the feelings and opinions of judges and lawyers rather than the facts of the case or an objective set of rules.

Finally, many interviewees felt that their race, and other aspects of their identity, negatively affected their pretrial treatment and outcomes. This group of primarily Black individuals described interactions with White prosecutors and judges who seemed unwilling or unable to hear their perspectives. They also described experiences where they saw White individuals who were accused of a crime receive more lenient treatment than they received as a person of color, leading them to question whether racial bias was at play.

- **Taken together, the findings suggest that broad bail reform policies such as CJR can reduce the footprint of legal system involvement, but they are not a salve for equity issues broadly and racial disparities specifically.**

This finding is in line with a small but growing body of research on the impact of bail reform efforts on racial disparities, including annual reports released by the New Jersey Administrative Office of the Courts that document the persistent presence of racial disparities in the New Jersey jail population.⁷ This report's findings suggest that additional approaches to improve racial equity and the perceived fairness of the system are needed.

LOOKING AHEAD

To identify reforms that are more effective in reducing racial disparities, research organizations and jurisdictions should center the groups that are most burdened by the legal system and seek to address the root causes for their differential outcomes. The NJ CARE study began this work by documenting disparities and analyzing the perspectives of a majority-Black group of individuals who had experienced New Jersey's pretrial system. A thematic analysis of their perspectives and recommendations, the implications from the impact study, and the broader literature on this topic point to a few potential approaches for improving racial equity and perceptions of fairness in the legal system:

- reducing initial contact with the legal system
- incorporating procedural justice techniques to improve police-community relationships, elevating the voices of individuals who navigate the pretrial system as defendants, and enhancing transparency and communication

7. Esther Laaninen, "Pretrial Consequences: The Impact of New York State Bail Reforms on Racial and Ethnic Disparities in Pretrial Outcomes," (master's thesis, City University of New York, John Jay College of Criminal Justice, 2022); Glenn A. Grant, *Criminal Justice Reform Annual Report to the Governor and the Legislature: 2018* (Trenton: New Jersey Administrative Office of the Courts, 2018); Glenn A. Grant, *Criminal Justice Reform Annual Report to the Governor and the Legislature: 2019* (Trenton: New Jersey Administrative Office of the Courts, 2019); Glenn A. Grant, *Criminal Justice Reform Annual Report to the Governor and the Legislature: 2021* (Trenton: New Jersey Administrative Office of the Courts, 2021).

- employing the least restrictive conditions of release possible and offering supportive services
- engaging prosecutors in reform efforts
- diversifying staffing

As a next step, more rigorous research on these approaches is needed, given the dearth of existing research. Finally, jurisdictions and research organizations should be mindful to engage communities and people who have navigated the legal system as defendants when designing future equity-focused reform efforts, since they are experts on what people going through the system need the most to be successful and to experience a level playing field. Their participation will be vital to build trust and create sustainable community-driven change.

1

Introduction and Study Overview

INTRODUCTION

In a completely equitable society, individuals would not be any more or less likely to experience burdens during their interactions with societal systems just because of their race. However, historically explicit and implicit practices and policies across the United States reinforce racial inequity, and these racial disparities are observed in many social systems, including health care, education, housing, and employment.¹

The criminal legal system is perhaps one of the most notable examples of an inequitable system that is ripe for improvement. Racial disparities are observed throughout the legal process, including during arrest, bail setting, pretrial detention case disposition (that is, the final outcome of a case, such as a guilty plea or dismissal), and sentencing.² A 2015 study of policing in New Jersey found that Black people were more likely than White people — in some cities, nearly 10 times more likely — to be arrested for low-level offenses, such as loitering, disorderly conduct, and possessing small amounts of marijuana.³ Studies have shown that, on average, Black people are more likely to have money bail set and are given higher bail amounts (for similar charges) than White people.⁴ The harm that is caused by this inequity is amplified by the fact that Black Americans are more likely to be living in poverty compared with White Americans and are therefore less likely to be able to post bail.⁵ Black people accused of a crime are also more likely than White people to be detained in jail and less likely to be released pretrial on their own recognizance or on nonmonetary conditions.⁶

-
1. Riley (2012); Solomon, Maxwell, and Castro (2019); de Brey et al. (2019); Manduca (2018).
 2. Kochel, Wilson, and Mastrofski (2011); Gase et al. (2016); Gelbach and Bushway (2011); Menefee (2018); Kutateladze, Andiloro, Johnson, and Spohn (2014); Metcalfe and Chiricos (2018); United States Sentencing Commission (2023); Spohn (2015).
 3. Garcia (2015). While shedding light on the disparity in arrest rates, the study results cannot be interpreted as a reflection of disparate crime incidence rates.
 4. Arnold, Dobbie, and Yang (2018).
 5. Hinton, Henderson, and Reed (2018).
 6. Arnold, Dobbie, and Yang (2018); Dobbie, Goldin, and Yang (2018); Sawyer (2019); Gelbach and Bushway (2011).

Racial disparities in the pretrial system — that is, the period from the point of arrest to a case’s resolution in a verdict, plea deal, or dismissal — have important implications for health equity. Spending time in jail — sometimes even just a few days — is associated with a variety of adverse effects on physical and mental health, as well as on subsequent legal system involvement and social determinants of health such as employment, housing, and family ties.⁷

Nationally representative polls have found that public trust in the criminal legal system has eroded in recent years. In a 2023 Gallup poll, just 17 percent of Americans reported having a “great deal” or “quite a lot” of confidence in the criminal legal system. While 43 percent of Americans reported having similar levels of trust in police, 2023 marked an all-time low for confidence in the police as well.⁸ Understanding how to improve the public’s perception that the system is fair and equitable is vital to implementing publicly supported and long-lasting pretrial reform. (See Box 1.1 for a description of how these terms are used in the study.) But few studies have focused on this issue — particularly from the perspectives of individuals who have experienced the legal system as defendants.

Jurisdictions across the country have made efforts to reduce their use of pretrial detention and improve perceptions of fairness through different types of reforms — most notably by reducing their use of money bail or by using actuarial risk-assessment tools to guide release decision-making.⁹ On January 1, 2017, the State of New Jersey implemented Criminal Justice Reform (CJR), a sweeping set of changes to its pretrial legal system that employed both approaches. With these reforms, the state shifted from a system that relied on money bail to a system that has virtually eliminated the use of money bail. The new system uses a risk-assessment tool — the Public Safety Assessment, or PSA (described in more detail in Chapter 2) — that informs decision-making by generating scores based on an accused individual’s assessed risk of failing to appear at future court hearings and committing additional crimes if released. The State’s goals were to improve fairness throughout its pretrial system and reduce unnecessary pretrial detentions while protecting public safety and ensuring that people continue to show up to their court hearings. Improving racial equity was not an explicit goal of the reforms, but racial equity issues may be affected by reducing pretrial detention and eliminating the use of money bail.

7. Geller, Fagan, Tyler, and Link (2014); Sugie and Turney (2017); Dobbie, Goldin, and Yang (2018); Lowenkamp, VanNostrand, and Holsinger (2013); Holsinger and Holsinger (2018); Pager (2003); Brinkley-Rubinstein (2013); Lowenkamp (2022). For an overview of existing health disparities, see National Academies of Sciences, Engineering, and Medicine (2017).

8. See Saad (2023). For a historical perspective, see Sherman (2002) and Tyler (2001).

9. Risk-assessment tools are validated, actuarial tools that use factors such as criminal history and community ties to estimate an individual’s probability of appearing in court and probability of avoiding a new arrest during the pretrial period. Such tools and their accompanying, jurisdiction-specific decision matrices (which produce release-condition recommendations based on the results of the tool and local policies) are widely used by jurisdictions across the United States to guide release-condition decision-making. For an overview of locations where risk assessment tools are being used, see National Conference of State Legislatures (2022). Chapter 2 provides more information on the risk-assessment tool used in New Jersey.

BOX 1.1

A Note on the Terminology in This Report

The authors define “racial equity” as the state in which individuals are no more or less likely to experience burdens when interacting with the criminal legal system because of their race. A reduction in racial disparities is one way that a system can move toward greater racial equity, and the research team used this indicator as one of the main measures of equity in the study. While this measure of equity is appropriate when conducting a quantitative study that examines trends among thousands of cases, individuals are likely to perceive their experiences as equitable if they perceive them as fair—that is, if they perceive that they are treated justly, impartially, and with respect and dignity. For that reason, in the qualitative component of the study, the team also examined perceptions of fairness in New Jersey’s pretrial system as a way of assessing equity experientially.

Additionally, this report uses the term “criminal legal system” instead of “criminal justice system” based on recommendations from members of the study’s advisory board, who have direct experience navigating the criminal legal system. This term is also used in accordance with the Vera Institute of Justice’s reasoning, which highlights the ways the current American criminal legal system is rife with inequities.*

NOTE: *See Bryant (2021).

With support from the Robert Wood Johnson Foundation’s Policies for Action program, MDRC conducted the New Jersey Criminal Justice Reform Advancing Racial Equity (NJ CARE) Study. The study sought to assess racial equity and perceptions of fairness in New Jersey’s criminal legal system after the implementation of the reforms to determine whether the reforms improved racial equity in the state. The study employed a mixed-methods approach that included quantitative and qualitative methods and participatory elements. This report describes findings from the study’s quantitative and qualitative analyses.

MOTIVATION FOR THE NJ CARE STUDY

In recent years, jurisdictions across the country have made significant changes to their pretrial systems. However, relatively little is known about the effects of these reforms on racial equity. An MDRC study of the implementation of the PSA risk-assessment tool in Mecklenburg County, NC, found that the reforms reduced pretrial detention for both Black and White people but did not reduce racial disparities between the two populations.¹⁰ Analyses

10. Redcross and Henderson (2019).

of the effects of New York State’s bail reform similarly found that racial disparities were still present after the reforms went into effect, with some variation in the impacts on disparities between racial groups.¹¹

There were several competing theories regarding CJR’s effects on racial disparities at the beginning of the NJ CARE Study. MDRC’s 2019 evaluation of CJR found that the New Jersey reforms reduced many of the negative impacts of the pretrial system on people who have been accused of — though not convicted of — a crime.¹² The results of the reforms included a reduction in arrests for the least serious types of offenses, a larger proportion of people with cases who were released without conditions, the virtual elimination of the use of money bail as an initial release condition, and a reduction in the length of time people with cases spent in jail in the month following arrest. The net result was a much smaller number of people in jail awaiting trial. While not rigorously assessed in MDRC’s earlier study, annual descriptive reports from the New Jersey Administrative Office of the Courts show that rearrest rates for the individuals who were released pretrial held steady after the reforms went into effect, as did their high court appearance rates.¹³ These findings suggest that the reforms were likely successful in meeting their goals of reducing the use of pretrial detention and upholding public safety and court appearance rates.

Since the 2019 evaluation found that CJR reduced arrests and time spent in jail following arrest, and since people of color (and particularly Black people) are disproportionately arrested and detained compared with White people, there was reason to hypothesize that CJR could have led to a reduction in racial disparities. On the other hand, this hypothesis assumes CJR reduces arrests and detention to the greatest extent among populations that had the highest rates before the reforms, which may not be the case. In other words, given the existing disparities in treatment between the Black and White populations, CJR would need to yield greater reductions in arrests and detention for Black people than for White people for disparities between the two groups to shrink.

The PSA risk-assessment tool’s potential effect on disparities is complex. On the one hand, advocates perceived these tools as offering a more objective and reliable assessment of an individual’s risks, since otherwise decision-makers’ judgment of a person’s risk would be based solely on whatever information they had on hand and could therefore vary considerably. However, others expressed concern that risk-assessment tools could exacerbate existing disparities by using legal history data (which are likely to reflect historical race disparities

11. Lu and Rempel (2022); Rempel and Weill (2021).

12. Anderson, Redcross, and Valentine (2019).

13. See Grant (2018); Grant (2019); Grant (2021). Grant (2021) shows that the percentage of people who were rearrested pretrial for indictable offenses (New Jersey’s equivalent of felony offenses) increased in 2020. However, the number of people who were rearrested pretrial for indictable offenses did not change, and furthermore, the number of people entering the system following an arrest decreased considerably. The report suggests that the COVID-19 pandemic played a role by affecting the composition of pretrial cases. It is also worth noting that crime rates went up nationwide during the pandemic, including in jurisdictions that did not implement bail reform. For example, see Gramlich (2021).

in criminal legal system contact) in the prediction of individual outcomes.¹⁴ In short, biased data could be used by the predictive models, influencing the risk-assessment tool's scoring and interpretation of that data.¹⁵

The NJ CARE Study set out to contribute knowledge about the effects of large-scale bail reform efforts on racial disparities in the pretrial system that would assist New Jersey policy-makers and inform the field at large. Any effects that CJR might have on racial disparities in pretrial system involvement would in turn have major implications for the physical and mental health and well-being of the affected populations, given the established link between legal system involvement and health. Furthermore, the study also explored whether individuals who were experiencing the pretrial system after the reforms as defendants perceived it as fair. Their experiences and the reforms' effects on racial disparities reveal valuable lessons about the effects of bail reform efforts on racial equity.

RESEARCH QUESTIONS AND COMPONENTS

To examine the effects of New Jersey's CJR on racial equity, the NJ CARE Study sought to answer the following research questions:

1. What is the impact of New Jersey's reforms on arrest decisions, pretrial detention, and case disposition for different racial groups? What is the resulting impact on racial disparities?
2. How did the reforms' effects on racial disparities in pretrial processes and outcomes vary between New Jersey's 21 counties?
3. What did the experiences of people who were accused of a crime look like within New Jersey's pretrial system after CJR went into effect? Did these experiences with the pretrial system affect their health and well-being, and if so, how?
4. What recommendations do people who were accused of a crime have for improving perceptions of fairness and equity in New Jersey's pretrial system?

A quasi-experimental impact analysis with an interrupted time series design was used to answer the first two research questions, while qualitative interviews with people who had experience as defendants in New Jersey were used to address the third and fourth research questions.¹⁶ Chapters 3 and 4 contain more information about the impact analysis and interviews.

14. Angwin, Larson, Mattu, and Kirchner (2016); Picard, Watkins, Rempel, and Kerodal (2019).

15. Goel, Shroff, Skeem, and Slobogin (2021); Porter, Redcross, and Miratrix (2020).

16. Some of the health and well-being findings are presented in this report. Others are available in the project's Photovoice virtual gallery. (See next paragraph for more details.)

NJ CARE used two participatory research methods. One of those methods was Photovoice. The participants (called photographers) took photographs and discussed them in a group with the research team. For this study, the photographers — who had experience as defendants in New Jersey — took photos that showed how their health and well-being were impacted by their experiences in the pretrial system. Photovoice submissions are available in a virtual gallery.¹⁷

Additionally, the study was guided from its launch by an advisory board of individuals with lived experience in New Jersey’s criminal legal system. This advisory board consisted of ten individuals who had either been directly impacted by the system because of a prior arrest or who worked in the system.¹⁸ The advisory board provided guidance and helped with the design of the qualitative study, the interpretation of the findings from the impact study and interviews, and the dissemination of the findings in this report.

REPORT ROADMAP

The remaining four chapters in this report present additional context, key findings, and policy implications. Specifically, Chapter 2 gives background information about CJR and an overview of New Jersey’s pretrial process after the reforms. Chapter 3 presents findings from an impact analysis of CJR’s effects on racial disparities in the pretrial process and describes the methods that were used. Chapter 4 describes findings from the qualitative interviews that were conducted with individuals who had navigated New Jersey’s pretrial system as defendants. Last, Chapter 5 explores potential approaches for improving racial equity — guided by the study’s impact and interview findings and the existing literature — that should be further evaluated for their effectiveness.

17. For the more information and to view the full Photovoice virtual gallery, see Lewy and Wasserman (2024).

18. The advisory board included three public defenders and two service providers.

2

New Jersey’s Criminal Justice Reform Initiative and Pretrial Process

This chapter provides background information about the New Jersey reforms and an overview of New Jersey’s pretrial process after the reforms.

NEW JERSEY’S CRIMINAL JUSTICE REFORM INITIATIVE

In most jurisdictions in the United States, judges set money bail for individuals who are charged with crimes, as it is believed to be a way to ensure that they will return for future court hearings and avoid incurring new criminal charges as they wait for their cases to be resolved. In practice, using money bail means that people with the financial resources to post bail are released, and people without the financial means are detained in jail.

In the United States, the reliance on money bail has increased dramatically over the past 40 years and is now the default release condition employed by many jurisdictions, contributing to racial disparities in incarceration rates.¹ On any given day in 2019, for example, over 730,000 people were held in jail – a number that is four times higher than in 1980, despite rates of violent and property crime (often considered the most serious type of crime) being at or near historic low points.² About two-thirds of those held in jail were awaiting trial.³ In line with national trends, New Jersey’s jail population more than doubled from 1970 to 2015. In the years leading up to the state’s 2017 reforms, pretrial detainees constituted roughly 70 percent of the jail population, with 12 percent of these detainees held solely because they could not pay bail of \$2,500 or less. There were vast racial disparities in the jail population, with Black people comprising 42 percent of the jail population despite comprising just 14 percent of state residents.⁴

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1. Picard, Rodriguez, and Rempel (2022); Hood and Schneider (2019); Menefee (2018).
 2. Minton and Zeng (2021); Federal Bureau of Investigation (n.d.).
 3. Minton and Zeng (2021).
 4. Vera Institute of Justice (2019); VanNostrand (2013).

In recent years, jurisdictions have been looking to reduce their heavy reliance on money bail. The State of New Jersey made groundbreaking and substantial changes to its pretrial system under its Criminal Justice Reform (CJR) initiative, which took effect on January 1, 2017.⁵ CJR virtually eliminated the use of money bail as a condition of pretrial release while implementing a suite of additional reforms. These reforms included the use of the Public Safety Assessment (PSA), an actuarial risk-assessment tool designed to estimate an individual's risk of failing to appear at future court hearings and of being rearrested if released pretrial.⁶ The PSA also notes whether there is an elevated risk of a violent crime. The PSA is used to inform arrest and release condition decision-making in New Jersey. Specifically, the PSA risk scores are interpreted with a New Jersey-specific decision-making framework—a written guide that uses the PSA risk scores, other case information, and state statutes and directives to recommend conditions of release. See Box 2.1 for more information about the PSA in New Jersey.

CJR also granted courts the option to detain individuals without bail until their cases are disposed, and established a pretrial monitoring program in which individuals who are released are required to check in with court staff members at regular intervals during the pretrial period.

Finally, CJR set out speedy-trial laws that set more explicit limits on the amount of time prosecutors have to reach case-processing milestones, such as indictment and case disposition, and on the amount of time courts have to schedule a first appearance hearing following an initial jail booking. First appearance hearings must occur within 48 hours after a person is booked into jail. New Jersey has held first appearance hearings more quickly since CJR, in part because public defenders have agreed to represent all people provisionally at their first appearance hearings, before it has been determined whether they are eligible for public defenders (based on their incomes). There is an overall time limit of two years to dispose of a case. After CJR, if the prosecutor fails to meet key deadlines in a case, then the court must release the individual while the case awaits disposition. However, the clock on a case can be “paused” for several reasons if requested by prosecution or defense, which would extend the time it takes to meet a case's next milestone.⁷

5. For more background about the motivations for CJR, see Rabner (2017).

6. While money bail is still technically available, it is now used very rarely as a condition for being released initially. A prior MDRC study found only three instances where bail was set as an initial release condition in 2017. Since CJR was implemented, bail is more commonly used for responding to violations or failures to appear for scheduled court events. See Anderson, Redcross, and Valentine (2019) for more information. For more information about the PSA, see *Advancing Pretrial Policy and Research* (n.d.).

7. The clock might be paused for several reasons, including to hold competency hearings for the defendant, file applications for drug or alcohol treatment as a condition of probation, grant continuances (such as for delays on the motion of the prosecutor when a case is complex), adjust for failures to appear, and recuse a judge. See NJ Rev Stat § 2A:162-22 (2023). See also Glenn A. Grant, N.J. Directive 06-22 (July 12, 2022).

BOX 2.1

The Public Safety Assessment in New Jersey

The PSA generates two risk scores: one that gauges the likelihood that an individual will fail to appear at a future court hearing, and one that gauges the likelihood that an individual will be rearrested pretrial. To generate the risk scores, the PSA uses nine factors that are based on an individual's legal records and case characteristics:

- the age at current arrest,
- a current charge for a violent offense,
- a pending charge at the time of the arrest,
- a prior misdemeanor conviction,
- a prior felony conviction,
- a prior violent conviction,
- a prior failure to appear in court in the past two years,
- a prior failure to appear in court that is older than two years, and
- a prior sentence to incarceration.

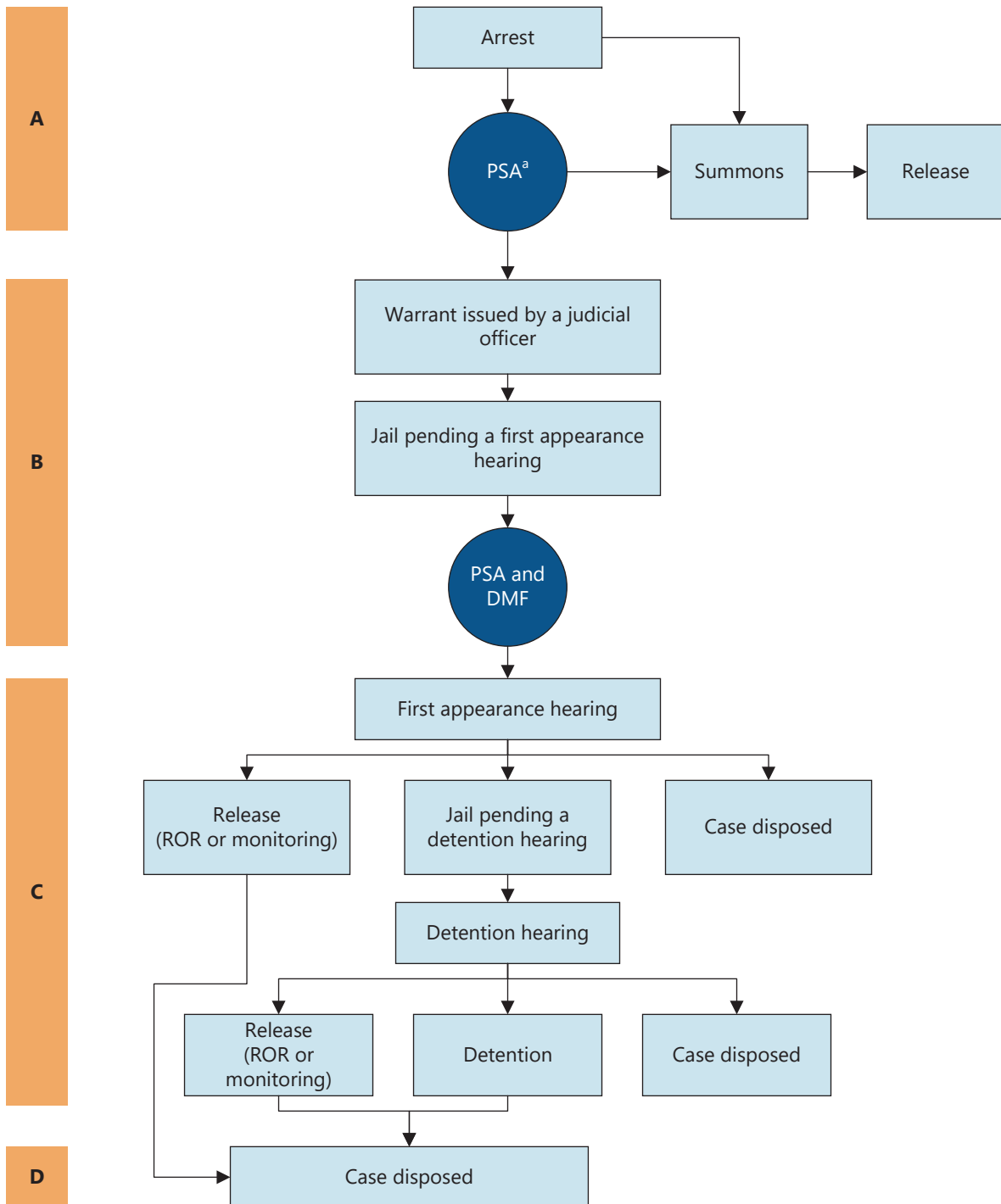
Each factor is weighted differently depending on the strength of its relationship with each of the outcomes of interest (that is, failing to appear at a court hearing and being rearrested pretrial). The two scores range from 1 to 6. A score of 1 indicates the lowest level of risk, while a score of 6 indicates the highest level of risk. Additionally, the PSA calculates a scaled score to produce a flag (yes or no) that indicates whether there is a risk of an individual committing a new violent crime.

NEW JERSEY'S PRETRIAL PROCESS AFTER CJR

With CJR, the State of New Jersey implemented a suite of reforms to its pretrial system. This section describes the pretrial process in New Jersey following the implementation of the reforms.

Figure 2.1 depicts the steps of the pretrial process after the reforms. Shown in Area A of the figure, an individual who is arrested in New Jersey will be issued either a complaint-summons or a complaint-warrant (for simplicity, a “summons” and a “warrant” for the remainder of this report). A summons guarantees that an individual is immediately released to the community and given a date to appear in court. Police officers may issue a summons without any judicial review. A warrant, on the other hand, requires judicial approval and results in an individual being booked into jail until a release condition can be set at a first appearance hearing. Most types of “indictable” and “nonindictable” charges — the New Jersey equivalent of felonies

FIGURE 2.1
New Jersey Pretrial Case Flow After Reforms Were Implemented



NOTES: PSA = Public Safety Assessment; DMF = decision-making framework; ROR = released on recognizance.

^aThis PSA is referred to as the “preliminary PSA.” For individuals who are issued a warrant, this score is later reviewed and will be recalculated by Pretrial Services before the first appearance hearing, as indicated by the “PSA and DMF” circle in the flow chart.

and misdemeanors, respectively — can be issued on summonses per the police officer’s discretion.⁸ If a police officer wants to pursue a warrant — or is not sure whether to seek a warrant or issue a summons — the officer runs the PSA (from a police station) to generate a risk score based on the individual’s history with the legal system, age, and current charge. (See Box 2.1.) The officer then determines whether to issue a summons or a warrant based on the charge, the PSA risk scores, and guidelines issued by the state attorney general about what PSA risk score thresholds to use to issue warrants.

An officer who decides to pursue a warrant sends the request for a warrant and preliminary PSA report electronically to a judicial officer for review. The postreform process is more formal and takes more time for police officers to complete. Before the reforms, if law enforcement officers wanted to seek a warrant, they would fingerprint the individual and call a judicial officer to request a warrant, describing the evidence and their reasons for requesting one.

As shown in Area B of Figure 2.1, individuals who have been issued a warrant are subsequently booked into jail to wait until their first appearance hearing, which must occur within 48 hours. (Notably, before the reforms, they would have been given a bail amount and had the option to post bail before being booked into jail.) At that point, pretrial services staff members review the preliminary PSA report that was produced at arrest to ensure it was calculated accurately. They may add missing information about the individual’s criminal history (for example, information from other states) or modify erroneous information. Changes in information about criminal history result in an automatic recalculation of the PSA results. A final PSA report is generated, and pretrial services staff members use New Jersey’s customized decision-making framework (DMF) to produce recommendations for release conditions based on the final PSA risk scores and state-specific policies and guidelines.⁹ The DMF generates three possible release recommendations: (1) release on recognizance — that is, without any conditions; (2) release to one of four levels of pretrial monitoring by Pretrial Services, as shown in Table 2.1; or (3) no release. The PSA report and DMF recommendations are then shared with the presiding judge, prosecutor, and defense attorney before the first appearance hearing. It is important to note that judges still have the discretion to make release condition decisions and are not bound to these recommendations. Additionally, an individual who is released pretrial can be given more conditions, such as electronic monitoring (the use of an electronic device to monitor a person’s movement and location) or drug testing.

Area C of the figure shows the next stage of the pretrial process: the initial hearings, which comprise the first appearance hearing and the detention hearing. At the first appearance hearing, the prosecutor, the defense attorney (who is often a public defender), and the judge are involved in making decisions about release for individuals who had been booked into jail following arrest on a warrant.

8. There are some serious charges for which a warrant must be issued. These charges include murder, manslaughter, sexual assault, robbery, carjacking, escape from custody, or extradition from another state. See Christopher S. Porrino, N.J. Directive 2016-6 (Oct. 11, 2016) and N.J. Ct. R. 3:3-1.

9. See New Jersey Courts (2022) to view New Jersey’s decision-making framework.

TABLE 2.1
Pretrial Monitoring Levels

Level	Phone Check-Ins	Face-to-Face Meetings	Electronic Monitoring
1	Once a month		
2	Once a month	Once a month	
3	Once every other week	Once every other week	
3 + electronic monitoring/home detention	Once every other week	Once every other week	The duration of the monitoring period

SOURCE: New Jersey Administrative Office of the Courts (2022).

NOTE: Lower monitoring levels have fewer requirements and involve less frequent interaction with Pretrial Services, while higher monitoring levels require more frequent communication and may impose additional requirements, such as limits on where people can travel, drug testing, or electronic monitoring.

If the prosecutor files a motion for pretrial detention at the first appearance hearing, the individual is held in jail pending the results of a detention hearing. At the detention hearing, the judge determines whether to detain the individual throughout the pretrial period or release the individual on their own recognizance or to pretrial monitoring. Detention hearings must occur within three business days of first appearance hearings. But since brief adjournments are often granted to either the prosecution or the defense, in practice, hearings commonly occur about a week after first appearance hearings. Detention hearings did not exist before the reforms (the legal option for preventive detention was a component of the reforms).

If the prosecutor does not file a detention motion, the judge decides whether to release the individual without conditions or to pretrial monitoring at the first appearance hearing (which occurs within 48 hours of arrest).

As was the situation before the reforms, the judge may also dismiss a case or an individual may accept a plea deal at any point in the pretrial process. Most cases are disposed after the initial hearings, as indicated in Area D. A case can be disposed after a trial, plea deal, or dismissal. Only a small percentage of cases statewide are disposed at or before the detention hearing.¹⁰

10. MDRC’s earlier study found that, among individuals arrested for an indictable charge in 2017, only 2 percent had their cases resolved at the time of the detention hearing. See Anderson, Redcross, and Valentine (2019).

3

Impacts of the Reforms on Racial Disparities

Assessing the effects of Criminal Justice Reform (CJR) on racial disparities in the criminal legal system was a goal of the New Jersey Criminal Justice Reform Advancing Racial Equity (NJ CARE) Study, as described in Chapter 1. This chapter presents findings from an impact analysis of CJR's effects on racial disparities. It begins with an overview of the data and the interrupted time series method. The two racial groups included in this analysis — Black individuals and White individuals who were experiencing New Jersey's pretrial system as defendants — are also described in greater detail. The following section describes findings on the reforms' effects on arrest decisions, pretrial detention, and case disposition for the two groups, as well as on disparities between the groups.

KEY FINDINGS

1. Overall, the findings suggest the estimated effects of the New Jersey pretrial reforms on the use of summonses (which guarantee immediate release to the community) in lieu of warrants (which require a jail booking) at arrest and on the length of the initial jail stay after arrest were similar for both Black and White people. This is a net positive for both groups.
2. The reforms did not appear to have led to many positive reductions in disparities between the groups.
3. It is still clear that there is a greater law enforcement burden on Black communities and that racial disparities persist in the pretrial system to varying degrees. The largest disparities appear to occur at the front end of the system.

DATA AND METHODS

The data used in the quantitative analyses were provided by the New Jersey Administrative Office of the Courts. The data included the arrest event date, complaint type, charges filed, county, initial release conditions, jail admission and release dates, and case disposition information (including plea deals). For the purposes of this study, all complaints and charges associated with a person on the same arrest date were considered a single “arrest event.” Each arrest event was only counted once in the analysis, even if it resulted in multiple complaints or complaint types. Furthermore, individuals can have more than one case represented in the data if their cases had separate arrest event dates. In those cases, each arrest was analyzed separately. Arrest events that included both a warrant and a summons were counted as a warrant. For arrest events where multiple charges were filed, the analysis focused on the most serious charge.

The sample covered three years before the implementation of CJR in January 2017 and just under two years afterward – that is, from January 2014 through October 2018.¹ It included all arrest events in New Jersey that resulted in a warrant or summons being issued during that period. The total sample size was 675,319 and included 412,158 summonses and 263,161 warrants, amounting to approximately 135,000 arrests per year over a period of approximately five years. Together, Black individuals and White individuals comprised almost all of the cases in the data at 38 percent and 54 percent, respectively. One limitation of the data is that the data did not include information on ethnicity, which means that some people in both the Black and White groups are likely also Hispanic or Latino. Also, while other racial groups do appear in the data and, combined, make up about 8 percent of the sample, their numbers were too small to reliably estimate effects separately.

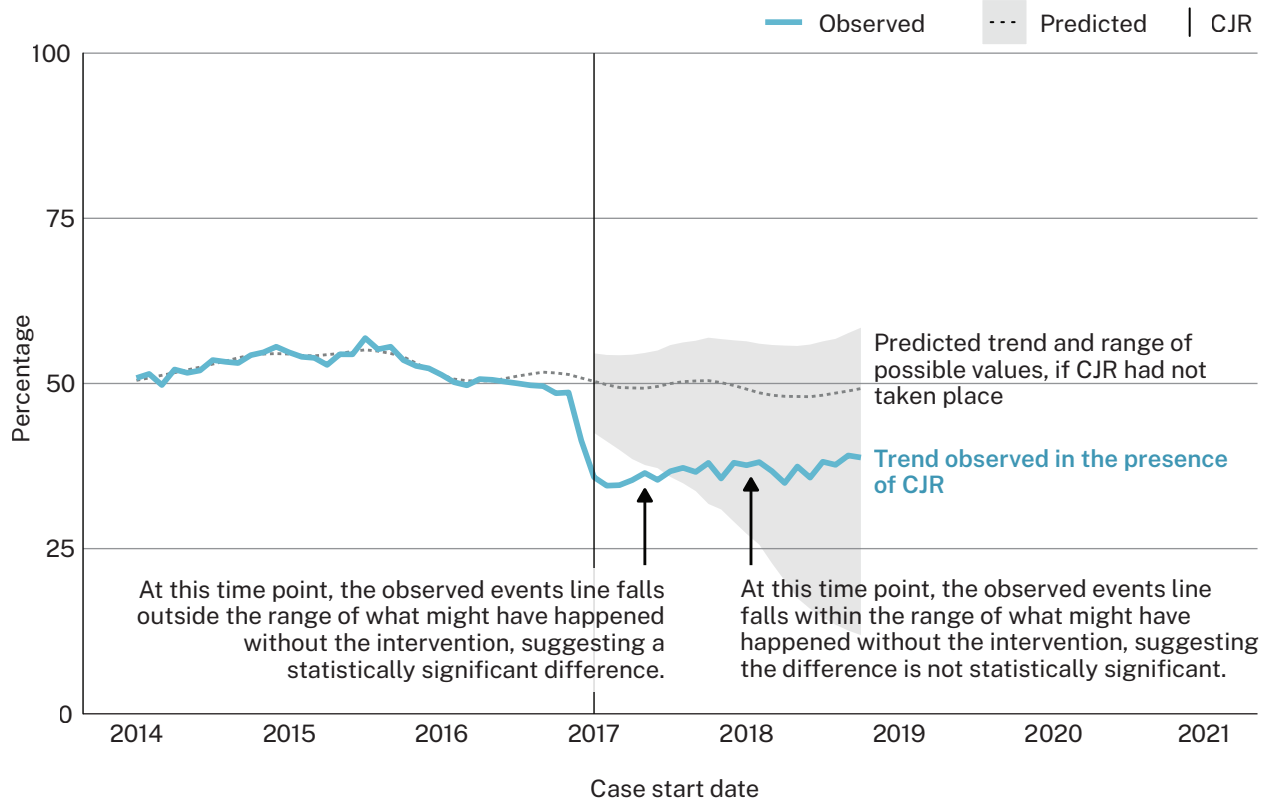
The research team used an interrupted time series design to estimate the effects of CJR on outcomes separately for both Black and White people who were accused of crimes and for the disparity in outcomes between the Black and White groups. Disparities were calculated as the Black-to-White ratio in rates of each outcome. For example, if, for a given period and outcome, Black people had a rate of 50 percent and White people had a rate of 25 percent, the raw disparity would be 2.0. Ratios closer to 1.0 suggest less disparity, while those further away from 1.0 in either direction suggest more disparity.

To conduct the interrupted time series analysis, cases were grouped into monthly cohorts (for example, all cases with arrest dates in January 2017 were included in the January 2017 cohort) to create a time series of monthly averages. Data from the pre-CJR period were modeled to predict what monthly averages would look like in the post-CJR period, in the absence of the reforms. The estimated effect of CJR then represented the difference between the actual monthly averages and the predicted monthly averages. Importantly, the models did not control for case or individual characteristics and thus represent an “upper bound” of the

1. At the time the analysis was conducted, October 2018 was the last month represented in the data available to MDRC for the present study.

disparities.² See Figure 3.1 for more information on interpreting the interrupted time series figures in this chapter.

FIGURE 3.1
How to Interpret Interrupted Time Series Figures



NOTE: The graphs in this report show outcomes by month in the years before and after Criminal Justice Reform (CJR) was implemented. This figure is shown for illustration purposes. The area to the right of the vertical line in each graph, from January 2017 onward, represents the period after CJR was implemented. The blue line shows the observed outcome values in each month (as aggregated counts or percentages), while the dotted black line shows the predicted outcome values in the absence of CJR, based on data from the pre-CJR period. The difference between the blue and dotted black lines represents the estimated effect of CJR on the outcome measure — the difference CJR made. The gray envelope around the dotted black line in the period after CJR was implemented represents the 95 percent confidence interval around the predicted value at each point. If at any point the blue line falls outside the gray envelope, the effect is considered to be statistically significant.

2. It is possible that controlling for case and personal characteristics would result in a reduction in the estimated disparities, as these factors may explain some of the disparity. The research team elected to present the unadjusted impacts to understand the full extent of the disparities.

It is important to note that the interrupted time series design is not without its limitations. For example, it cannot rule out the possibility that some event other than the reforms led to the changes. It could also be the case that the time points included in the analyses represent extreme values of key outcomes. For example, if the rates of disparity in initial bookings were unusually high during the time points leading up to the reform, there is the chance that any impacts that were observed during the postreform period were simply the result of the postreform time points being more representative of typical outcomes. This phenomenon is called regression toward the mean.³

FINDINGS

This section presents findings from the impact analyses, with a focus on key takeaways.

In summary, the New Jersey pretrial reforms appeared to have similar effects among Black and White people. They increased law enforcement officers' use of summonses (which guarantee immediate release to the community) in lieu of warrants (which require a jail booking) at arrest. And people were released faster from jail pretrial. These impacts align with the State's goal to reduce pretrial detention, which was a motivation for CJR.

There was a reduction in the Black-to-White disparity ratio for initial jail bookings. However, this reduction was driven by increased booking rates among White people with cases, as opposed to reductions in booking rates among Black people with cases. The reforms did not appear to have led to meaningful reductions in disparities between the groups at other pretrial process points, though disparities at those other points were smaller to begin with. Finally, counties did not vary widely from one another in terms of the reforms' effects. The sections below provide more details on the results of the impact analyses.

Arrest

Understanding whether CJR had an effect on the number or type of arrests for either Black people or White people in New Jersey — or on the disparity in arrest rates between the two groups — is essential for understanding any effects that are observed at later parts of the system.⁴ CJR changed the process that police officers use when making an arrest, and it is reasonable to question whether the change had effects for either racial group or both of them. Therefore, as a first step in the quantitative analysis, arrest rates of Black people and White people were examined separately, for the whole state and for each county.

Table 3.1 shows average yearly number of arrests in New Jersey per 100 individuals, for all Black people and all White people. It also shows the disparity in the number of arrests between these

3. See Linden (2017).

4. It is important to note that arrest rates do not fully represent the incidence of criminal behavior in either group. There is no reliable data to measure crime incidence rates.

groups. Before CJR (from 2014 to 2016), the annual number of arrests for every 100 people in New Jersey ranged from about 4.5 to 4.9 among Black people and from about 1.3 to 1.4 among White people — so nearly 5 out of every 100 Black people were arrested in a year, while about 1 out of every 100 White people were arrested in a year.⁵ For each of the pre-reform years, the number of arrests was about 3.6 times greater among Black people than White people. In the year after the introduction of CJR, arrest rates increased slightly for both groups, but the Black-to-White ratio remained similar (3.5). In other words, there were large disparities in the number of arrests per 100 people, and these disparities remained large after the reforms went into effect. Note that in this analysis, the 2018 rates only include arrests through October 2018, so the rates are likely higher than shown.

TABLE 3.1
Number of Arrests for Every 100 New Jersey Residents, by Race and Year

Year	Black Individuals	White Individuals	Black-White Ratio
2014	4.5	1.3	3.5
2015	4.5	1.3	3.6
2016	4.9	1.4	3.6
2017	5.0	1.4	3.5
2018	4.3	1.1	3.8

SOURCES: MDRC calculations based on data from the American Community Survey and the New Jersey Administrative Office of the Courts.

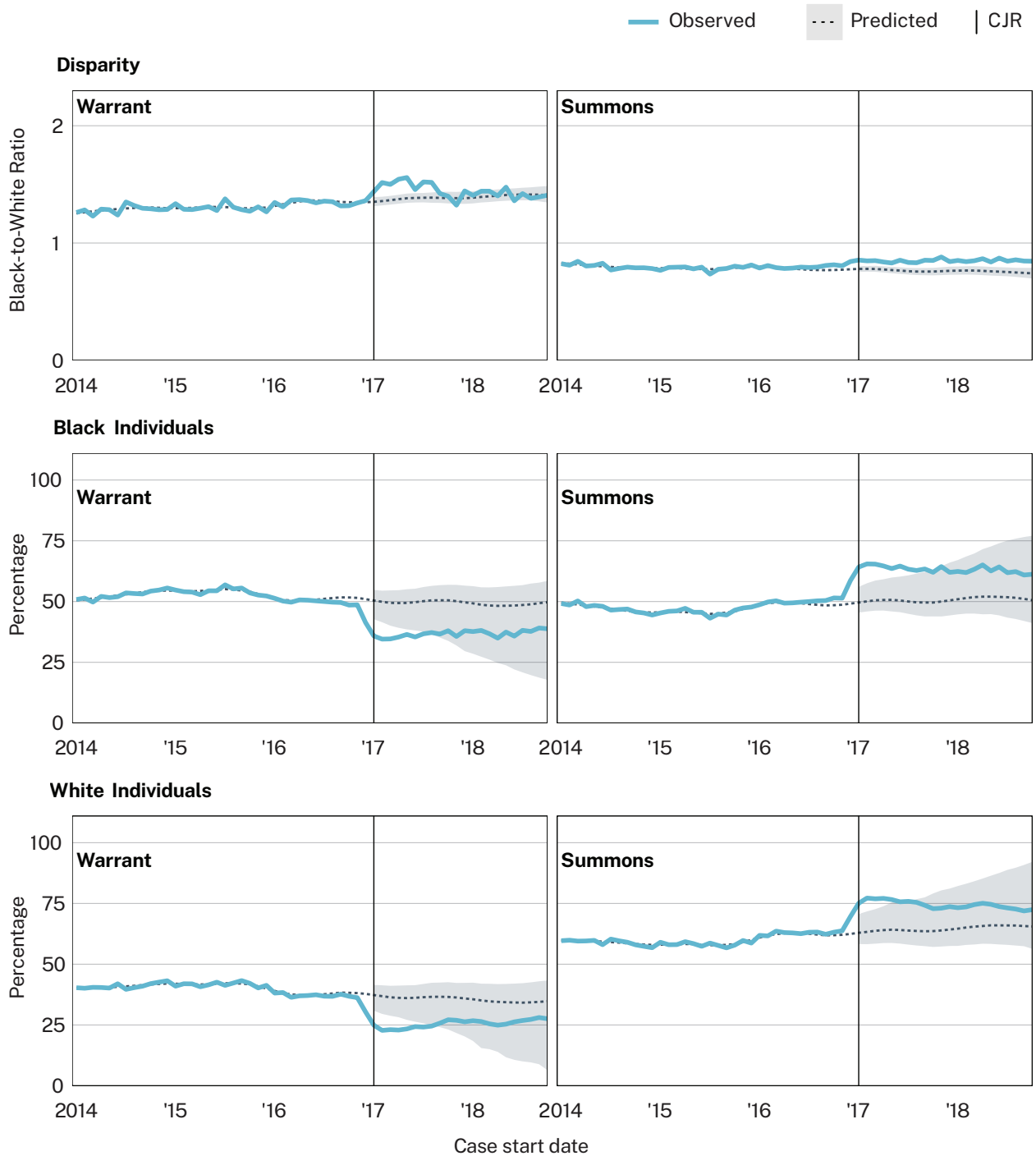
NOTE: For 2018, arrest data are only included through October. For that reason, the arrest rates for 2018 are likely higher than shown in the table.

Summonses Versus Warrants

As noted above, police officers have some discretion in processing an arrest event as either a summons or a warrant. A warrant represents a more serious case type and requires that the accused individual is taken into custody. If police officers are more likely to pursue warrants for Black individuals compared with White individuals who have similar charges and case histories, then the case processing decision can be an important point for examining disparities. Figure 3.2 shows the results of such an examination. After the reforms went into effect, a greater share of people (both Black and White) were issued summonses instead of warrants at the point of arrest than what was predicted had the reforms not taken place. This outcome represents a “benefit” for both groups, as summonses are a less onerous case processing type. However, since the increase in the percentage of cases processed through a summons was similar for both groups, there was no meaningful effect on the racial disparity between the groups. In the sample, about 60 to 65 percent of the arrests of Black people were processed as summonses in the months following the reforms, compared with about 70 to 77 percent of the arrests among White people.

5. These rates may be slightly overestimated. A person may have been arrested more than once in a year, but each of that person’s arrest events (if they occurred on different days) would be counted in these rates.

FIGURE 3.2
Arrest Events by Complaint Type



SOURCE: MDRC calculations based on data provided by the New Jersey Administrative Office of the Courts.

NOTE: CJR = Criminal Justice Reform.

Jail Bookings

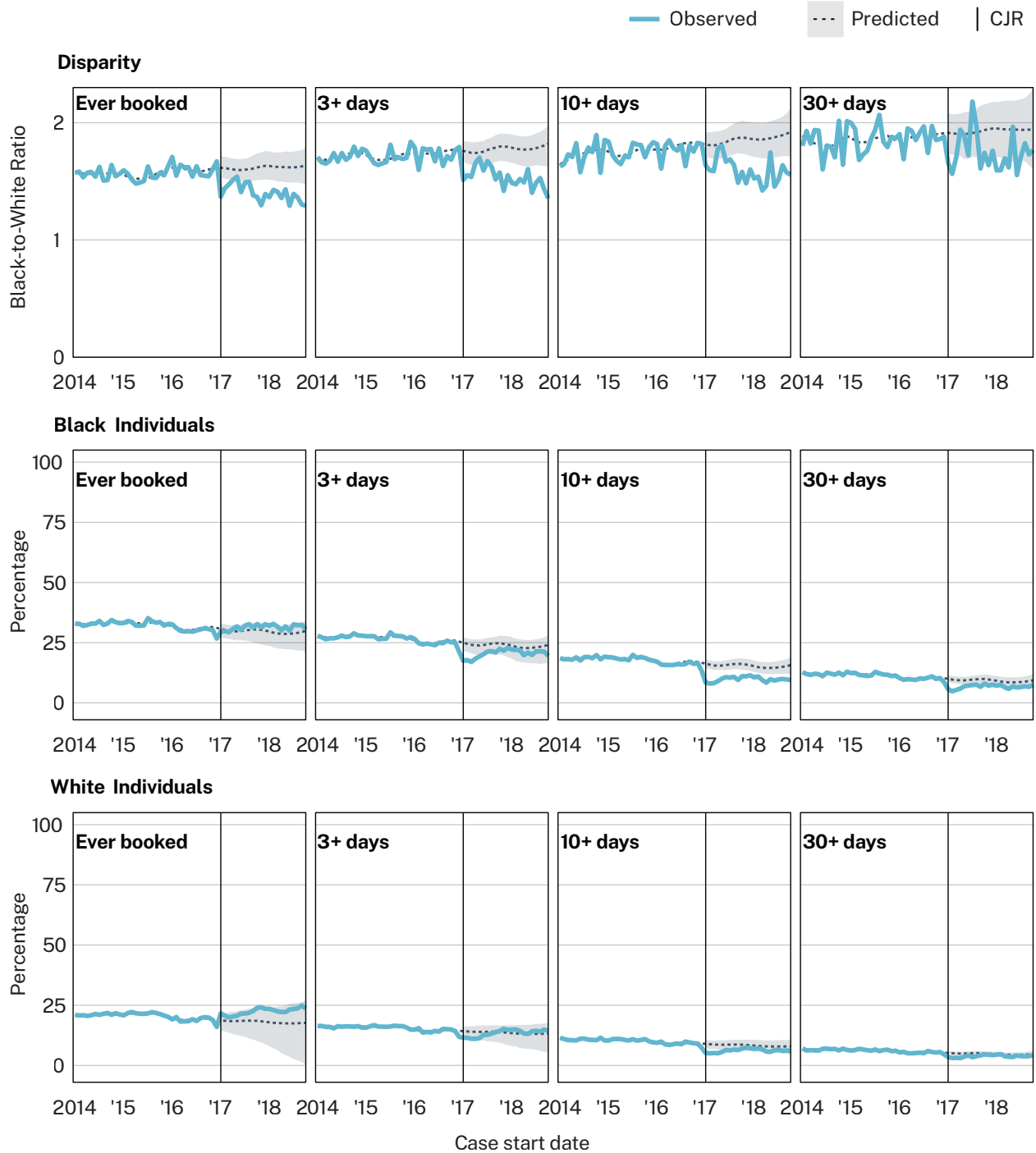
Figure 3.3 shows how long individuals' initial jail stays were following arrest, broken out by racial group: *ever booked* (at least 1 day), *3 days or more*, *10 days or more*, and *30 days or more*. These lengths were selected for specific reasons. *Ever booked* is a measure of who gets booked into jail. After the reforms, the first appearance hearing was typically held within 48 hours after arrest, so *3 days or more* indicates that someone was likely kept in jail after that hearing. Someone held for 10 days or more was likely kept in jail after the detention hearing, and someone held for 30 days or more was likely detained for a longer period pretrial. As shown, a smaller percentage of Black and White people were held in jail pretrial for long periods (*10 days or more* or *30 days or more*) following arrest after the reforms went into effect. In other words, people who were booked into jail were released more quickly after the reforms went into effect.

The disparity between the percentages of Black and White individuals who were initially booked into jail was lower than would be expected in the absence of the reforms, suggesting that the reforms reduced the Black-to-White disparity in jail booking rates. Importantly, this gap was not narrowed due to reduced jail bookings among Black people with cases, but rather by an increase in initial jail bookings among White people with cases. Since the reforms went into effect, all people who are arrested on warrants in New Jersey are immediately booked into jail while they await a release decision (which is made at the first appearance hearing). The increase in White people booked into jail could reflect the policy change—before the reforms, these individuals may have been more likely to afford to post money bail and avoid jail altogether.⁶

In Figure 3.3, it appears that the reforms may have additionally reduced the disparity in jail stays that were 3 days or longer and 10 days or longer. However, these effects were driven by the same phenomenon that drove the reduction in the *ever booked* measure: More White people were initially booked into jail. The team conducted an analysis of initial jail stays among only the individuals who had been initially booked into jail (as opposed to the full study sample, which includes individuals who had not been initially booked into jail). Figure 3.4 shows the results of this analysis. When restricting the sample in this way, the disparity levels themselves are smaller even before the reforms and very close to 1. (The closer to 1, the smaller the disparity between the two groups.) This analysis shows that the reforms affected the Black and White groups similarly. It also revealed that for both groups, among those initially booked into jail following a warrant, the length of the initial jail booking was

6. While the previous MDRC study of CJR found no impact on the number of people who were initially booked into jail, impacts were found in the NJ CARE Study due to a slightly different sample of cases. The previous study's sample included a larger number of lower-level offenses (called petty disorderly persons offenses in New Jersey), and the NJ CARE Study did not. The earlier study found that there was a large reduction in arrests for these lower-level offenses as a result of the reforms, which counterbalanced CJR's requirement that all individuals who were arrested on warrants be initially booked into jail—leading to no effect overall on the number of people who were booked into jail. See Anderson, Redcross, and Valentine (2019).

FIGURE 3.3
Length of Initial Jail Stays After Arrest, Full Sample

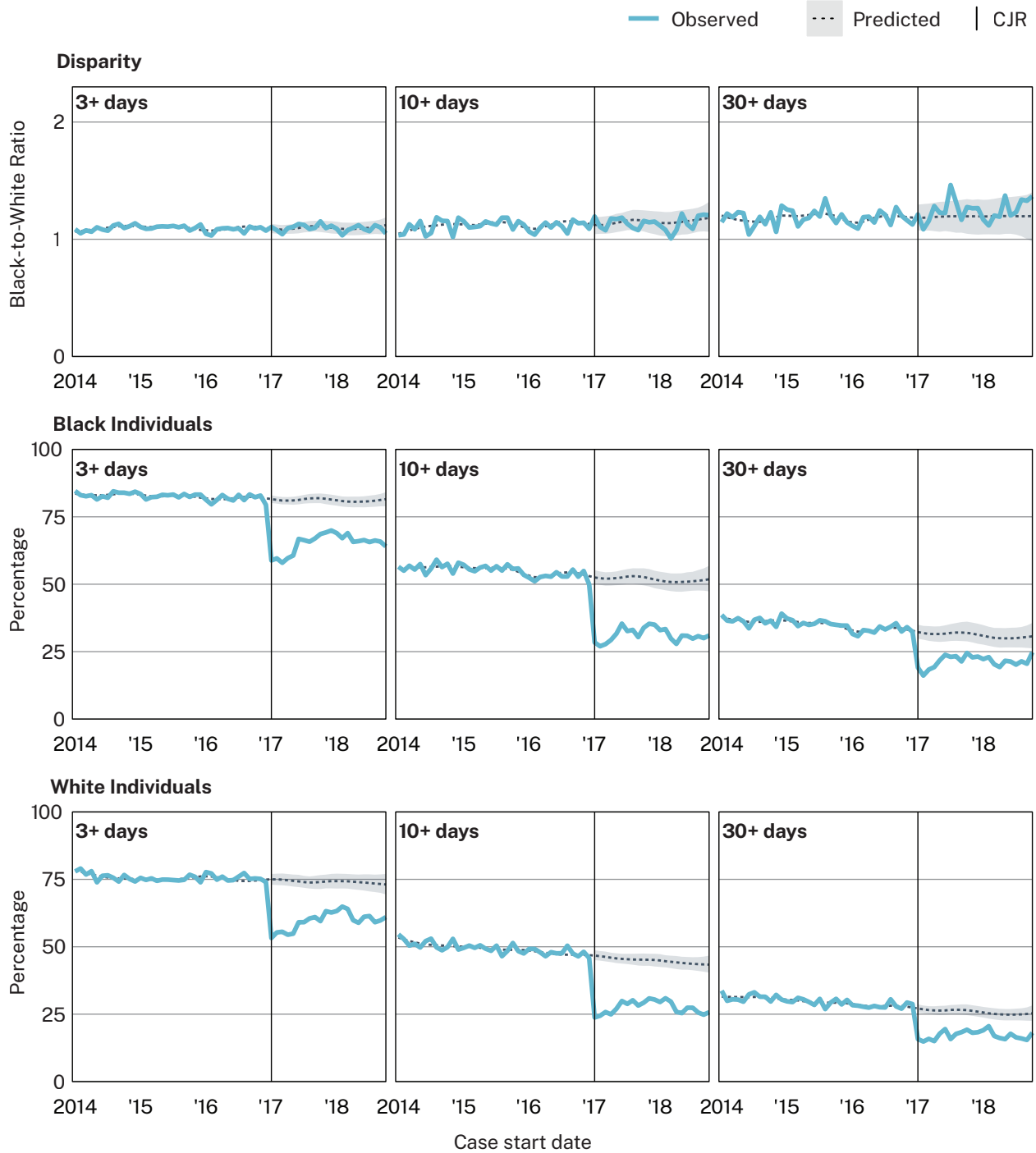


SOURCE: MDRC calculations based on data provided by the New Jersey Administrative Office of the Courts.

NOTE: CJR = Criminal Justice Reform.

FIGURE 3.4

Length of Initial Jail Stays Among Individuals Who Were Initially Booked into Jail



SOURCE: MDRC calculations based on data provided by the New Jersey Administrative Office of the Courts.

NOTE: CJR = Criminal Justice Reform.

substantially shorter than what would be predicted in the absence of the reforms. (Both groups were 10 to 20 percentage points lower than predicted for the *3 days or more*, *10 days or more*, and *30 days or more* measures.) This could be attributed to the fact that the court must release individuals at the first appearance hearing in the absence of a request for a detention hearing or some other kind of hold.

Case Disposition Time

Appendix Figure A.1 shows the median length of time from arrest to case disposition for both racial groups, as well as the ratio of the disparities between the groups.⁷ Before the reforms, median case disposition times were nearly the same for Black and White people accused of crimes, at a little over 100 days. In the postreform period, there was a slight increase in the length of time that it took for Black individuals' cases to reach disposition compared with what was predicted had the reforms not gone into effect. This increase added one to two weeks to the median amount of time to disposition for Black individuals in a given postreform month. It also translated into small but statistically significant increases in the Black-to-White disparity ratio in most of the postreform months that were studied.

The research team ran an additional analysis of the case disposition time among individuals who had been initially booked into jail in order to adjust for the sizable disparities that were observed in the rates at which Black and White people enter New Jersey's pretrial system and are booked into jail after arrest. The results would therefore speak to whether the disparities observed in Appendix Figure A.1 were due to differences in court processes after the jail booking or whether they may have been driven by disparities in entry into the system. As seen in Appendix Figure A.2, the analysis showed that the disparity between the two groups was even smaller before CJR, and that there were no significant impacts on disparities after the reforms went into effect. This finding suggests that the slight increase in the case disposition time disparity was not driven by court processes after individuals were booked into jail.

Plea Deals

The percentage of people who took plea deals over time is shown in Appendix Figure A.3. The reforms led to increases in the percentage of both Black and White people who took plea deals, with larger increases observed among Black individuals. About 25 percent of Black people and about 20 percent of White people took plea deals before the reforms went into effect. Six months after the reforms went into effect, about 31 percent of Black people and about 24 percent of White people had their cases resolved with a plea deal.⁸ It is important

7. This analysis was limited to arrest events that took place through August 2017 to allow for adequate follow-up time. Arrest events with a length of time from arrest to disposition that was greater than 14 months during the study period were excluded from the analysis to reduce bias in the sample.

8. These rates are likely underestimated. Generally speaking, in state and federal jurisdictions in the United States, most cases that are not dismissed end with a plea deal. See Devers (2011). It is possible that plea deals were not consistently recorded in the data, which would explain the relatively low rates of plea deals that were observed. However, since the plea deal rate was stable over time, there is no

to note these changes did not lead to any statistically significant effects on disparities between the two groups (with the Black-to-White disparity ratio fairly close to 1—indicating no differences between groups—to begin with).

Similar to the secondary analysis for case disposition time, the research team also conducted a plea deal analysis that limited the sample to individuals who had been initially booked into jail. Shown in Appendix Figure A.4, the analysis found that limiting the sample in this way lessened the disparity between the groups both before and after the reforms. However, the percentage of people that took plea deals still increased significantly after the reforms went into effect, compared with what would have been expected in the absence of the reforms. This finding indicates that pretrial processes after the initial jail booking likely drove the increased plea deals that were observed for both racial groups after the reforms.

County-Level Analysis

In addition to assessing statewide impacts of the reforms, county-level analyses were conducted to assess how effects may have varied between New Jersey's 21 counties. These analyses were done to determine if any counties experienced especially large reductions in disparities in key outcomes and therefore might show how the reforms could be implemented to improve equity and shed light on the mechanisms that led to impacts. However, the impacts on disparities did not vary considerably between counties.

SUMMARY

In order to achieve racial equity between Black and White people who experience the pretrial system, the reforms would need to have had a greater positive impact among Black individuals, given the preexisting disparities that disadvantaged Black individuals. Yet, overall, the analyses found that the reforms had similar effects on Black and White people. Among both groups, on average, law enforcement officers' use of summonses instead of warrants was higher, and both groups were released from jail more quickly than predicted in the absence of the reforms. The reforms did not appear to have led to meaningful reductions in disparities between the groups. Larger disparities between the groups are observed at the front end of the system: arrest rates, summons and warrant decisions, and initial jail bookings. This finding suggests that more targeted approaches are needed to fully address racial equity and to reduce racial disparities in a net positive direction.

However, taken with findings from the earlier MDRC study of CJR, the New Jersey reforms appear to have broadly reduced the negative impacts of the pretrial system on individuals experiencing the system as defendants by reducing arrests for minor offenses, increasing

evidence that it biases the time series analysis of racial disparities. Additionally, these plea deal rates appear lower as they are constructed on a sample that also includes dismissed cases, which comprise about 40 percent of dispositions.

the use of summonses in lieu of warrants, and releasing people faster from jail following arrest. Because Black people are disproportionately represented in New Jersey's criminal legal system, it is possible that the reforms have had an overall positive benefit in the Black community, despite not meaningfully reducing Black-White disparities. It remains clear that there is greater law enforcement burden on Black communities (as reflected in arrest rate disparities) and that racial disparities persist throughout New Jersey's pretrial system to varying degrees, though they are largest at the point of entry.

It is worth noting that these quantitative analyses can only speak to the reforms' effects on overall patterns of arrests, detentions, case dispositions, and processing time. These analyses do not provide details on the experiences and consequences of criminal legal contact for the thousands of people who are brought into the system each year. The next chapter describes the direct experiences and perspectives of some individuals who engaged with the pretrial system following the reforms.

4

Perspectives on New Jersey's Pretrial System from People Who Have Been Accused of Committing Crimes

Racial disparities in group outcomes are, by definition, about aggregate experiences, which researchers can assess when they have access to large data sets. While it is difficult for individuals to experience these aggregate disparities, they can perceive that an experience is unjust in some way. Individual experiences can shed light on system processes and practices that may lead people to feel that the system is unfair or biased against them.

This chapter focuses on the experiences and perceptions of 13 people who experienced New Jersey's reformed pretrial system as defendants. The interviews shed light on the extent to which interviewees felt they were treated fairly and equitably throughout the pretrial period. Based on the interviewees' pretrial experiences, the research team has compiled recommendations for ways to improve pretrial processes and services to increase people's sense that the system has treated them fairly, and to lessen their impact on individuals' health and well-being. These recommendations, presented alongside promising approaches that could potentially reduce racial disparities in the pretrial system, are described in the final chapter of this report.

KEY FINDINGS

- 1. Not having a chance to share their perspective played a large role in interviewees' perceptions of the New Jersey pretrial system's fairness.** Interviewees felt particularly silenced during the risk-assessment processes and initial hearings. They said that approaches that promote opportunities for people who have been accused of a crime to tell their side of the story could make pretrial processes feel fairer to them.
- 2. Interviewees felt that the risk-assessment tool placed too much emphasis on their history with the legal system and that a more holistic approach would be a fairer and more accurate basis for decisions about detention and monitoring.** Most pretrial risk-

assessment tools in use today, including the Public Safety Assessment (PSA), draw heavily on criminal history with the goal of standardizing the process to assess an individual's risk and making the process more evidence-driven.¹ Interviewees thought that the tool offered a limited view of their character, and they questioned the fairness of decisions made with the PSA, such as decisions about detention or release conditions.

3. **Most interviewees felt that pretrial monitoring requirements, especially electronic monitoring, were onerous, stigmatizing, and destabilizing.** Interviewees who had restrictive monitoring requirements generally felt that they were being treated unfairly during the pretrial process, which suggests that there is a relationship between monitoring levels and perceptions of fairness. Interviewees recommended a more supportive approach to supervision that focused on providing people with services.
4. **Interviewees prefer the changes made after Criminal Justice Reform (CJR) to money bail, but they were concerned that challenging conditions in jail, detention without the option for release, and lengthy timelines to disposition could lead individuals to accept plea deals that they might not have taken otherwise.**
5. **Processes, timelines, and decisions were often unclear to interviewees, which contributed to their mistrust of the pretrial system.** They worried that the decisions that were made about their cases were based on the feelings and opinions of judges and lawyers rather than the facts of the case or an objective set of rules.
6. **Many interviewees felt that their race, and other aspects of their identity, negatively affected their pretrial treatment and outcomes.** This group of primarily Black individuals described interactions with White prosecutors and judges who seemed unwilling or unable to hear their perspectives. They also described experiences where they saw White individuals who were accused of a crime receive more lenient treatment than they received as a person of color, leading them to question whether racial bias was at play.

DATA AND METHODS

This analysis draws from in-depth interviews with 13 individuals who had been arrested or had a court case after CJR went into effect. The interviews focused on their personal experiences and assessments of the current system, their vision of and recommendations for a more racially equitable system, and how their health and well-being were affected by their pretrial involvement.²

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1. Advancing Pretrial Policy and Research (n.d.).
 2. The research team also interviewed a small number of people who work in the pretrial system or advocate for its reform. Due to the small sample size, those interviews were not formally analyzed. However, they contributed to the research team's understanding of CJR, pretrial processes, and the local context.

Interviews were conducted individually via Zoom or phone and lasted for about an hour. They were recorded and transcribed before being uploaded into Dedoose, a mixed-methods analysis software that was used to systematically code the interviews. Coding and analysis were completed using an iterative approach. First, codes were applied to the data that mirrored the topics and questions that were discussed in the interviews, such as experiences with pretrial processes, health and well-being, and fairness and equity. Then the data were exported to Word or Excel where they were analyzed using a thematic approach. Sentiments and experiences shared by at least 3 of the 13 interviewees were grouped into themes; salient perspectives held by 1 or 2 individuals were also included.

The interviewees were not meant to be representative of the larger population of people who interact with the pretrial system in New Jersey. Instead, the goal of the interviews was to show the experiences of some people in a deep and meaningful way, provide case studies that can shed light on the current pretrial system, and identify opportunities for change.

Interview Sample

The interview sample is made up of people who were at least 18 years old and had been arrested or had a court case in New Jersey after CJR went into effect. Potential interviewees were identified by the New Jersey Institute for Social Justice (a Newark-based advocacy organization) or the project's advisory board.³ Once identified, potential interviewees were then referred to members of the research team, who formally recruited them for interviews.

A little over one-half of the interviewees identified as men. The majority identified as Black or African American. Interviewees were 36 years old, on average. They lived in 7 of New Jersey's 21 counties, with a substantial number from Newark or neighboring towns. Most interviewees were parents or cared for children. All but one of the interviewees were working at the time of the interviews. Through their work or volunteer activities, many of the interviewees were advocates or organizers aiming to improve their communities.⁴

Nearly all the interviewees had been arrested within the past six years (per the eligibility criteria). Interviewees shared details about their most recent interaction with the pretrial system, starting with the incident that led to their arrest. One person described how an altercation at a family cookout escalated to his arrest. Several women had conflicts (such as a public argument) with or about a romantic partner. Others were arrested after a moment of crisis or a change in circumstances. One person was arrested during a suicide attempt that led to an altercation with the police, another was involved in a fatal car crash after falling asleep at the wheel, and a third was arrested for possession of an illegal firearm that he said he acquired because he was worried about his family's safety after a home break-in.

3. New Jersey Institute for Social Justice is a racial and social justice advocacy organization. For more information visit <https://njisi.org/>.

4. The recruitment pathways may have led to a greater number of interviewees who were engaged in activism. As described above, interviewees are not representative of the larger pretrial population in New Jersey.

The interviewees' involvement with the criminal legal system varied. Some said they had been arrested "more times than I can count," while others said that the incident they described in the interview was their only encounter with the police. More than one-half had been assigned to pretrial monitoring. Most had been detained in jail or prison at some point in their lives, including a mix of pretrial detention and postconviction incarceration.

KEY FINDING #1

Not having a chance to share their perspective played a large role in interviewees' perceptions of fairness in New Jersey's pretrial system.

While a preliminary PSA score is used by police officers in arrest decisions, a final PSA score is calculated after the person has been detained. The final PSA score and the decision-making framework are used by judges and prosecutors at the initial hearing to inform their decision about whether (and under what conditions) someone is released from pretrial detention. (See Chapter 2 for additional information on New Jersey's pretrial processes.)

Interviewees said that they frequently felt silenced when decisions were made about their level of risk and their detention or release conditions. One interviewee reported being told by his public defender not to attend an initial hearing meeting on Zoom because he would not be permitted to speak, and another was not allowed off mute during a virtual hearing. Interviewees wanted to share their side of the story about the incident that prompted their arrest, to describe their character and accomplishments, or provide contextualizing details, and they found it frustrating that they were not permitted to do so. They expressed concern that being silenced could have real consequences for their release conditions, especially when information they thought was inaccurate was used to make decisions about their release. Without a chance to share their perspective and have it factored into the decisions made about their release, they felt that the PSA score was at best inaccurate and at worst biased. They questioned the fairness of the decisions about their release conditions that stemmed from the PSA.

[At the detention hearing on Zoom,] I was trying to talk to the judge. They was like, "You're not able to speak. Don't speak." They kept me on mute. They wouldn't let me speak or say anything at all. I just had to listen to them tarnish my name and say all the negative things about me. I also had support letters coming in . . . telling them about the positive things that I had been doing inside the community to help [reduce] violence. They didn't look at none of those things. They just took the letters, probably didn't even read them, and just went on with the case.

— A 39-year-old Black man from Essex County

When you go before them they tell you, "This is your charge now." When you try to say, "No, that's not true," they tell you, "Don't talk." They're just gonna assess who you are. They're gonna go over your information, assess what the charge

is, assess who you are, and if you aren't a criminal. It could be fair if they actually give people a chance to explain — "Hey, this is wrong; this is not how it happened. Can you look into it?" — before we go into *You're taking me to jail or putting me in a bracelet*. That should be assessed. They're assessing you and it's based on how they feel about you.

— A 34-year-old Black woman from Essex County

Some people also doubted that their perspective would have mattered even if they had been given the chance to share it. Interviewees reported different reasons why they felt their voice may not have been heard, such as prosecutorial power that they felt limited judicial discretion (judges' power to make decisions based on their judgment, as guided by the law) and the formulaic nature of the risk-assessment process. Interviewees wanted more care and attention to have been paid to the specifics of who they were as individuals and the details of their case.

It was already set in stone: This is what happens.

— A 31-year-old Black man from Gloucester County

Do I feel like I had a say in [the initial risk assessment] or like I could have altered it in any way? No, probably not. Either way, they were going to lock me up.

— A 38-year-old White woman from Ocean County

My perspective wouldn't have mattered. It wouldn't have mattered. The crime trumps the mental aspect of the person who's in the process of doing something that's [considered] breaking the law.

— A 29-year-old Black man from Burlington County

It seems to me that the prosecutor has more power than the actual judge himself. One time I went to court and the judge said, "Well, yeah, I wouldn't mind giving you a break on this, but I know the prosecutor would oppose me." He looked at the prosecutor; the prosecutor [shook his head] and said, "Yeah, we're gonna oppose you." So he said, "My hands are tied." But [he had] judicial discretion. He had the opportunity. His thing was the lash-back from the prosecutor's office.

— A 54-year-old multiracial man from Camden County

Interviewees' experiences point to a distinct lack of voice throughout the risk-assessment, detention, and release-condition processes. Their experiences suggest that a pretrial system that gives people accused of crimes the chance to share their perspective could increase their sense that they are treated fairly and equitably. The opportunity to share one's perspective and have it considered in decision-making is a central principle in procedural justice known as *voice*. Procedural justice focuses on perceptions of fairness in processes that resolve disputes and result in decisions, like those involved in the pretrial system. Research has

shown that people are more likely to view the legal system as fair when procedural justice principles are present.⁵

The opportunity to speak in court settings also carries risks for people who have been accused of a crime. Public defenders serving on this study’s advisory board said that many defense attorneys counsel their clients not to speak during pretrial processes out of concern that they could say something that hurts their case. While procedural justice can be a tool to improve how systems interact with the public, care must be taken to ensure that such approaches do not inadvertently harm individuals who are navigating the pretrial system as defendants.⁶ Additional approaches will also be needed to address underlying systemic problems or disparities within the pretrial system, which are beyond the scope of procedural justice.⁷ The final section of this report provides additional recommendations to remedy racial disparities and increase opportunities for people navigating the pretrial system as defendants to share their voices.

KEY FINDING #2

Interviewees felt that the risk-assessment tool placed too much emphasis on their history with the legal system and that a more holistic approach would be a fairer, more accurate basis for decisions about detention and monitoring.

A PSA score is calculated based on factors like someone’s age, current charge, prior misdemeanor and felony convictions, and prior failure to appear in court.⁸ Interviewees felt that the PSA score and detention hearing put too much emphasis on their history with the legal system and not enough attention on their positive accomplishments. A few people felt that the emphasis on their prior history was misplaced, especially if they had already successfully served their time. They pointed out that things that happened many years ago continued to be held against them, while their more recent accomplishments were not factored in. One interviewee summed up this idea by saying that the risk-assessment tool did not see “in between times” — that is, all the things that people accomplish between interactions with the criminal legal system. Interviewees also wanted to see more consideration for the conditions that might lead someone to commit a crime, including poor mental health, poverty, and a lack of access to community resources. Some said the tool’s emphasis on negative events in their criminal history resulted in a depiction that did not match how they see themselves, or how their friends, family, and community would describe them.

5. Center for Justice Innovation (2012); Rempel (2014).

6. Any time people who have been accused of a crime address the court or take the stand, there is a chance they will say something that hurts their case. Defense attorneys must routinely weigh the risks and benefits of their clients speaking in court and help prepare their clients to do so. Public defenders may be able to prepare their clients during the risk-assessment process if they have the time and resources.

7. See Wurmfeld (2022).

8. For more information, see Chapter 2 and Advancing Pretrial Policy and Research (n.d.).

I didn't think the score was [fair]. They don't take in your background, where you came from, your household, abuse you may have suffered. They don't take none of that stuff into consideration.

— A 54-year-old multiracial man from Camden County

I was a high school dropout when I went into prison. I came out with a degree — working on a second one — and a plethora of certificates and apprenticeships and all this other stuff. They go into weighing your history of crime, but they don't go into weighing so many other things. . . . I will never not be a murderer in their eyes, honestly. I will never not be that to them, no matter how much good I put into the world or how many hands I help.

— A 33-year-old Latina woman from Monmouth County

I haven't been in any trouble. I've consistently stayed with a job and showed them all the changes that I made after my incarceration. The things you have done to try to change your life around, they don't even look at that. They just look at the things that you have done in your past that are on your record. They don't weigh the good with the bad. If it were fair, [they would] take into [consideration] that the person hasn't been arrested in *this* many years and also what have they been doing with themselves. Like, again, I was arrested in 2009. This was 2021.

— A 39-year-old Black man from Essex County

As described in Chapter 1, there is a robust debate about whether the use of criminal histories in public safety assessments brings more objectivity to decisions made about arrest and detention, and whether this potential benefit outweighs the risk of it more deeply entrenching existing racial disparities in the criminal legal system. While risk-assessment tools were initially designed to use objective factors to estimate risk in the hopes of creating efficiencies in assessment and mitigating the bias inherent in judicial discretion, this goal is frequently not fully achieved in practice.⁹ Interviewees said that the focus on criminal legal history in New Jersey to inform decisions about arrest and detention left them feeling like only part of their story was considered. In line with the interviewee's perceptions, several investigations have suggested that over-policing of Black communities and other communities of color and racial inequities in charging, conviction, and sentencing has led to systemic bias being coded into risk-assessment algorithms.¹⁰ Interviewees recommended amending the risk-assessment process to account for their positive accomplishments, family and community responsibilities, and the context of their arrest — especially their mental health.

9. Picard, Watkins, Rempel, and Kerodal (2019).

10. Freeman and McGilton (2020); Angwin, Larson, Mattu, and Kirchner (2016); the Sentencing Project (2018).

KEY FINDING #3

Most interviewees felt that pretrial monitoring requirements, especially electronic monitoring, were onerous, stigmatizing, and destabilizing. They preferred a less restrictive and more supportive approach to monitoring.

In New Jersey, individuals can be assigned to different levels of pretrial monitoring. At the lowest level, people are released on their own recognizance and have no monitoring requirements, and at the highest level, people are assigned to home detention with electronic monitoring. (See Chapter 2 for additional information on monitoring requirements by level.)

Not surprisingly, interviewees with lower monitoring levels found the requirements less burdensome. These individuals were largely able to return to their regular lives, despite the anxiety of their pending court cases. For example, one person was required to make monthly video calls to the pretrial services office, but if he was not able to get in touch with any staff members, he would simply leave a voicemail to satisfy the requirement and move on with his day.

I can say that [monitoring] hasn't really [affected me]. I had to actually call one time and check on any restrictions for traveling and anything like that and there are none. It hasn't really stopped anything. And I think part of the recommendation was to continue to live on as [normal] — that was what my legal counsel told me.

— A 31-year-old Black man from Gloucester County

It didn't affect me too much. . . . My life went on as normal, other than me just being worried about possibly having to go back to prison.

— A 27-year-old Black man from Essex County

However, most interviewees were on higher monitoring levels, and they found the requirements to be burdensome, stigmatizing, and isolating. Interviewees said their mental and physical health got worse because pretrial monitoring isolated and imposed restrictions on them and strained their family and social relationships. Interviewees spoke of significant changes in weight, reduced physical fitness, and preexisting conditions that were exacerbated by stress. They also reported feeling depressed, anxious, and, at times, angered by a situation they felt was unfair. They worried about what their pending cases might mean for themselves or their family members. Family members had to prepare for the possibility that the interviewees would no longer be able to provide care or contribute financially to their families. Children worried about what might happen to their parents, and friends and loved ones were called on to help with errands and responsibilities that interviewees found challenging because their mobility was limited by electronic monitoring.

I'm looking into therapy. I've just been really stressed. It's emotionally draining, mentally.

— A 33-year-old Latina woman from Monmouth County

I just wanted [my case] to be resolved at that point. I didn't want to keep prolonging it. A part of you wants to be home so bad forever. But when you know you're going in, it's like, *All right, just let me just get it over with.* . . . I was doing everything to numb it — like drinking, drinking, drinking. Sometimes I would smoke a lot of weed so I could pass out — honestly, [I was] always under the influence because if not, I would be in my head and I would just be so sad.

— A 33-year-old Black woman from Monmouth County

My friends would go shopping for my kids, they would do my daughter's hair, they would go food shopping, drop the groceries off to my mom — things of that nature. They had to get my kids to school, pick them up.

— A 34-year-old Black woman from Essex County

The effects of pretrial monitoring were felt most acutely by interviewees who were placed on electronic monitoring. Reporting requirements could mean long commutes. Twice a month, one interviewee had to take multiple buses to report to the pretrial services office, which was more than an hour away. Interviewees also said that restrictions on their mobility could cause them to miss important life events. One woman was unable to get permission to see her dying father and had to make the call to end life support by phone. Other interviewees found that their ankle monitor alarm went off even when they had permission to be out of their home. A woman found it deeply embarrassing when the monitor would go off during her classes, and she started to feel like it was not worth attending them. One time, her monitor reported that she was in a cornfield in Indiana while she was sitting in her home in New Jersey. Interviewees felt despondent and often embarrassed while on electronic monitoring.

There's a public stigma attached to [the electronic monitor] because you're wearing your criminal record, literally, on your ankle for everyone to see and judge you — as if you're not judged and stigmatized enough.

— A 33-year-old Latina woman from Monmouth County

I still try to continue school, but sometimes I would be in class and it was beeping. I'm like, *This is embarrassing, I'm leaving school for the day.* And I'm like, *You guys [Pretrial Services] approved that I'm in school these hours, why is my bracelet going off?* You could be anywhere and the bracelet just starts beeping, going off, saying that you're somewhere you're not supposed to be. You could get permission to go to a lawyer's office or a doctor's appointment, and it could be going off, stating, "You're not where you're supposed to be. You're not at home."

— A 34-year-old Black woman from Essex County

Interviewees on pretrial monitoring had employment challenges that stemmed from their limited mobility. People on electronic monitoring can get permission to go to specific places during specific time windows; however, interviewees found that getting approval could take a long time. For example, one woman found that the process was incompatible with her construction job, as it was nearly impossible to get permission to travel to frequently changing worksites in time. Another person was prohibited from working while on pretrial monitoring

as a part of his release conditions, and he lamented the lack of attention to his need to support himself and the stress of mounting bills. Losing their jobs and the stability that came with them made people feel depressed.

I'm not sure how this will affect my job in the long run. The longer the court case takes, the longer I'll be on the ankle monitor. And then that means if [my employer] had any trainings at another state, I wouldn't be able to travel to the [training].

— A 33-year-old Latina woman from Monmouth County

I couldn't leave my address unless I got some type of permission for either a doctor's appointment or for mental health treatment. Those were the only conditions I was able to leave. It was hard because prior to everything happening, I was paying bills. I had my own car. Things don't stop just because you can't pay. Things just gonna keep on building up and building up. And that set me back. That's still hindering me now. It was definitely difficult because the thing is, when you work, you still have a sense of *Okay, I feel like I can still move forward with life*. I'm just stuck.

— A 29-year-old Black man from Burlington County

Several people felt that the monitoring conditions imposed on them were a kind of sentence in advance of a conviction, which strongly influenced their perception of the fairness of the pretrial system. For example, one interviewee was confused when her ankle monitor started going off when she arrived home after being released from jail. She called the pretrial services office and found out that the victim, whom she was not permitted to be within 500 feet of, was claiming to live in her apartment building. The interviewee knew that was not true and felt it was unjust that she was not permitted to stay in her own home when the claim was easy enough to verify. She said, "They basically gave me 24 hours to clean whatever I could out of my apartment and take it to my mother's house. I was explaining to them, 'You guys are basically telling me that I'm guilty right now until proven innocent. It's not innocent until proven guilty. You're not giving me a chance to explain; you didn't give me a chance to show my lease. I'm asking you guys to go to my building and go to the office and get a lease [to see] who actually lives there.' It was just 'No.' Like, whoever makes the report or the call, they're automatically the victim, and that's it." The interviewee could not return home the entire year she was on pretrial monitoring.

I was on pretrial services for 15 months. For 15 months, I had to report to a probation officer, right? Then I get sentenced to one year of probation, and they don't count none of that toward my sentence. That's not cool. You sentenced me prior to being sentenced, and then you don't count none of this toward the sentence that you give me. So, in all actuality, I was on probation for two years and three months, not one year."

— A 49-year-old Black woman from Essex County

They've been doing a lot of the home detention bracelets and that's not cool for people because . . . they're basically in jail at home and they're innocent.

— A 28-year-old Black man from Essex County

Interviewees recommended a more supportive approach to pretrial services that focuses on helping people address needs that arise during the pretrial period or that may have contributed to their arrest. One person suggested that rather than a *risk* assessment, a fairer system would provide individuals who are accused of a crime with a *needs* assessment. Another person wanted to see expanded referrals (from pretrial services staff members or other court officers) to services rather than a mandate to seek help without guidance. Interviewees also favored more preventative services that could keep people from being arrested in the first place, such as treatment for trauma, programs for young adults, and violence intervention initiatives. Supportive approaches to pretrial services are gaining traction in several jurisdictions across the country; a more supportive approach is being developed and tested in several counties in New Jersey.¹¹

Because punishing them is definitely not helping the situation. I think the criminal justice system should put money into helping the individual change what's going on in their life. Find out what's going on and speak to them, try to get them some help, counseling, the programs, things of that nature.

— A 39-year-old Black man from Essex County

[It would be fairer to focus on] the therapeutic side or trying to treat people better, not trying to penalize and further harm people and then just regurgitating [them] in and out of the system. That would look like actually trying to care and address people's needs so that they won't recidivate.

— A 33-year-old Latina woman from Monmouth County

If they were put on pretrial [monitoring] and instead of a penal system, [it was] a system of actually trying to be some sort of corrective, it would address the issues that prompted the behavior in the first place. Which would be asking, 'What are your needs?'

— A 31-year-old Black man from Gloucester County

The interviewees' suggestion that pretrial monitoring can be overly restrictive is also supported by research. There is little evidence showing that more intensive monitoring has positive effects on pretrial outcomes.¹² Electronic monitoring, one of the most restrictive forms of monitoring, has been shown to increase rates of technical violations and seems to lead

11. New Jersey Reentry Corporation (2023); A.B. A5268, Assembly Judiciary Committee, 2022-2023 Sess. (New Jersey, 2023), https://www.njleg.state.nj.us/bill-search/2022/A5268/bill-text?f=A5500&n=5268_S1.

12. See Mintz (2020) and Anderson, Valentine, and Holman (2023).

to poorer pretrial outcomes for people with lower risk-assessment scores.¹³ While pretrial monitoring is less restrictive and costly than detention, it comes with costs to individuals and society that should not be overlooked. Overall, research suggests that policymakers should opt for the least restrictive monitoring conditions possible and to use more restrictive conditions only when it is likely to improve a person’s pretrial outcomes (court appearance and rearrest). These considerations are discussed further in Chapter 5.

KEY FINDING #4

Interviewees prefer CJR to money bail, but expressed concern that poor jail conditions, detention without the option for release, and lengthy timelines for disposition could lead people to accept plea deals that they might not otherwise have taken.

Anyone who is arrested on a warrant in New Jersey is booked into jail until a decision is made about whether — and under what conditions — they will be released. The use of warrants decreased following CJR; however, tens of thousands of people are still booked each year.¹⁴

While some interviewees spoke extensively about issues with the new CJR policies and their implementation, several interviewees highlighted the elimination of cash bail as a positive change and were glad that people would no longer sit in jail before trial because they could not post bail.

Pretrial as it is [now, post-CJR], with checking in, is somewhat more equitable than holding people and expecting them to have a large expense to pay for their freedom.

— A 31-year-old Black man from Gloucester County

Bail isn’t supposed to be something that is out of reach for anyone. But, like, you know what? It actually is. . . . Bail isn’t supposed to be something that’s a ransom. I feel like it’s a very good thing that we’ve removed cash bail because I’ve personally been in situations where I had to sit and add [jail] experience to myself and my life’s progression for a case that I wound up beating.

— A 28-year-old Black man from Essex County

Bail reform was one of the best things I think they could have ever done because a lot of people . . . they get arrested and don’t have money for bail or lawyers. So I think the bail reform was the most just thing that could’ve ever come about because at least it gives people the opportunity to come home and

13. Anderson, Valentine, and Holman (2023); Advancing Pretrial Policy and Research (2021); Belur et al. (2020); Coopriider and Kerby (1990); Hatton and Smith (2020); Sainju et al. (2018); VanNostrand and Keebler (2009); Wolff et al. (2017); Mintz (2020).

14. See Anderson, Redcross, and Valentine (2019).

possibly get money to pay for a lawyer — as opposed to having to sit in a county jail and depend on someone else to try to get money for them for a lawyer, or them having to just have a public defender represent them.

— A 27-year-old Black man from Essex County

Six interviewees were detained during the pretrial period, some for only a short period before their release and some for the entirety of the pretrial period. Across the board, interviewees described their time in jail negatively. They spoke about unsanitary conditions and a lack of privacy, and described feeling like they were treated disrespectfully. A few interviewees had trouble getting information about their case while they were detained, which contributed to their feelings of isolation and confusion.

I was in a room with a drug addict who was going through withdrawal. It was terrible. I walked in my cell; there was vomit and feces on the floor. The toilet was stopped up and if you tried to flush it, it would spew back up and it would spill on the floor. I was trying to ring the bell so they could bring me some stuff to clean up. They wouldn't bring me anything to clean. They would come to the door and I would say, "Yo, can you give me a mop?" They'd say, "Okay, I'mma come back." Then their shifts change. And I'd be like, "You just don't care?"

— A 28-year-old Black man from Essex County

I was by myself. It wasn't like I was in the cell with someone else, so it wasn't like I had somebody to talk to or things like that. I kept trying to call my attorney to see when I was gonna go to court. Their phone system was kind of crazy, so I really wasn't able to talk to my lawyer while I was in there or talk to my family. I'm not being able to use the phone properly 'cuz I ain't know how to do it and I'm in the cell by myself and I'm isolated from everybody.

— A 49-year-old Black woman from Essex County

Being jailed negatively affected people financially, physically, and emotionally. Even people who were detained for short periods experienced job loss and stress, and their detainment strained their families. People who were detained for longer periods experienced the same stressors; they also lost their housing arrangements and missed important moments with friends and family, such as the chance to bond with a newborn baby or say goodbye to a beloved grandparent. Some interviewees who work in antiviolence or direct service roles also discussed how their absence could lead to a loss of services and support for their broader communities.

It was gradual. . . . Initially, when I first arrived: anxiety, increasing to depression. It didn't hit until my grandfather passed, actually. You want to give up at that point.

— A 28-year-old Black man from Essex County

I lost my job because I was detained. When I returned home, I got my job back. But I lost my apartment. I lost the relationship that I had with my child's mother. I also lost being able to see my daughter, my youngest daughter that I just had.

— A 39-year-old Black man from Essex County

I can't contribute when I'm behind the wall. I think that should be considered [in detention decisions] because there are a lot of people who do community work who end up in situations that they wish they weren't in, but they're actually a positive contribution to their community. When you take away role models and certain people, you impact the whole entire group of people. You impact other youth and children and family members who relied on that person. If you take that away, you definitely impact the lives of those around them.

— A 31-year-old Black man from Gloucester County

Many interviewees who were held in jail reported being there for long stretches, which affected how they viewed the prospects for their case. For example, one interviewee said she was repeatedly told that the prosecutor "wasn't ready" to try her case. After more than a year of waiting, she learned that her court date had been set. Almost immediately she learned that the prosecutor was no longer ready, perhaps because she and her mom had scraped up the money for a private lawyer when they learned the date. Held in jail, she wondered how much longer she would have to wait to go home to her kids. She'd initially declined to accept a plea deal because she felt that she had the evidence to prove her case in court. Facing even more delays, she eventually took a plea to bring an end to the case and return home to her children. Her experience accepting a plea deal to move her case forward and return to her life as soon as possible was not unique among interviewees. Eight interviewees reported taking plea deals, and all but two of them were detained when they elected to accept a plea. They expressed mixed emotions about their pleas, saying that they took them for good reasons but did not think the plea deals accurately reflected what happened. A few people were happy with their plea deal because they were able to complete parole quickly or had a positive experience with drug court that led to the expungement of their record.

I entered a plea bargain to get back home to my daughters. I knew people that was in there for over three years that shouldn't have been in there. I didn't want to take that chance because I wanted to get back to what I was doing, helping my community and trying to make my community safe. I didn't want to be out of my daughter's life more than I had to when I could just take this case, take the probation, and get back to raising my family the right way.

— A 39-year-old Black man from Essex County

It sucked because I do feel like I should have been in trouble, but I genuinely did not know that my friend had a gun. Like, honestly, 100 percent, I would have never went if I knew he did. So it was really hard because I felt like I didn't do what's on my file. I felt like I should have gotten time, but I felt like I should have gotten the minimal time for a felony. I don't feel like I should have had to

plead out to five years. But it was the last offer, so I really didn't have a choice, you know?

— A 33-year-old Black woman from Monmouth County

How can I really prove my innocence when you've already taken me from the outside world? My only option is to say, "Well, I'll take this [plea deal] just to go home or just because I can't handle being in jail or I'm scared of jail." I feel like that's really how the majority of their cases work. People don't wanna sit in jail Some people are not guilty. You are automatically labeled a criminal because you wanna come home.

— A 34-year-old Black woman from Essex County

For me, [taking a plea to enter drug court] was a better choice, as opposed to going back to prison and leaving my kids again. Regardless of whether I completed it or not, it was worth a try for me to stay out with my kids. . . . I did get my expungement order from the judge, and currently, I am a person with no more charges.

— A 27-year-old Black man from Essex County

New Jersey's CJR included speedy-trial reforms that aimed to place limits on the time it takes to reach milestones like indictment and case disposition, with a two-year total limit on cases. However, the clock can be paused for many reasons. (See Chapter 2.) Interviewees said that the timeline to reach milestones was frequently delayed, and they did not think that speedy trial laws were functioning properly.

That's their favorite thing, "Our caseload . . . our caseload." So they'll give extensions to the prosecutor like they did in my case. Three or four extensions of 30, 60, 90 days. Them things add up. Of course, we want it to be fair, but at the end of the day, you want the case resolved. Whatever the outcome is, people want to know what their fate is and not have to go through the stress — over two-and-a-half years — [to learn] what their fate is going to be.

— A 54-year-old multiracial man from Camden County

[In an equitable system] everyone would have an even timeframe. Some people sit forever waiting to see a judge and stuff like that. Other people, they push right through the system: Get them in and out quick. That sort of stuff's not fair.

— A 38-year-old White woman from Ocean County

The impact analysis discussed in Chapter 3 indicated that Black individuals accepted plea deals at higher rates and had longer case processing times than White individuals.¹⁵ Nearly all the interviewees in this study identified as Black and their experiences provide insight

15. The analysis was not able to look at the relationship between detention and plea deals, and it is possible that some people who experienced long times to case closure were not detained.

into the experiences and perspectives of some people of color who must make decisions about whether to accept plea deals while detained. Interviewees in this study suggested that there was a relationship between their negative experiences in jail — and the amount of time from arrest to disposition — and their acceptance of a plea deal. These experiences suggest that limiting pretrial detention may lessen the pressure on individuals to accept plea deals just so that they may be released from jail (a pressure disproportionately borne by Black people, who are detained at higher rates).

KEY FINDING #5

Pretrial processes, timelines, and decisions were often unclear to interviewees, which made them less likely to trust the pretrial system.

Interviewees expressed confusion — and said there was a lack of transparency — about when and how decisions would be made throughout the pretrial period. Interviewees said that processes (like assessing risk) were not explained to them in advance, and they were not given information about when their final risk-assessment score would be determined. One interviewee said he had to ask other people who were detained in jail what a risk assessment was. Interviewees who were detained on a warrant said it was difficult to get information about when their detention hearing or initial hearing would take place, and they were surprised not to be provided advanced notice before the hearings. They also wanted more information from the court about the pretrial processes — and from their attorneys, especially when they had busy public defenders. A lack of information left interviewees feeling isolated and anxious.

They ask you the same three questions every week when you check in [with Pretrial Services], and then it's like, "Oh, you have a court date." If you ask them a question — "Oh, we're not sure. We can't really answer that here." And it's like, "Well, who can help me? Who can answer all the questions I need answered?"

— A 33-year-old Latina woman from Monmouth County

The prosecutor contacted my fiancé [the victim] and my fiancé had to send an explanation saying he didn't want to press charges. The prosecutor sent him something back saying that she's not gonna pursue the charges. But I, myself, have never received anything saying they weren't pursuing the charges. They just never said anything to me again and I just never said anything back.

— A 38-year-old White woman from Ocean County

I had to harass my public defender. Like, literally, call after call. I was so new to all of it; I didn't understand so much. It was frustrating him because he has so much going on. I'm not his only person. He's like, "Just be patient. I'm taking care of everything." But for me, I wanted to know, like, *What am I looking at?* Not knowing what you're looking at, and the last thing you're hearing is 15 years . . . [it] had me in my head so much.

— A 33-year-old Black woman from Monmouth County

CJR includes processes — such as the PSA and decision-making framework (DMF) — that aim to provide objective and consistent approaches to making decisions about cases. However, without a clear sense of how and why decisions were made, interviewees were left feeling like the decisions about their cases were arbitrary or based on the feelings or opinions of judges or other officials. One interviewee captured this idea, saying, “They don’t tell how this decision was made, why the decision was made. The judges don’t really say much. They make their decision based on how they feel. You never know how it can go. The judge could be having a bad day.”

Interviewees were concerned that if actors within the pretrial system were making decisions based on their opinions, racial bias could play a role in decisions about their case. They said that increased transparency about pretrial processes and decisions could improve how individuals who navigate the pretrial system as defendants perceive it. The final chapter of this report describes potential approaches for improving communication.

KEY FINDING #6

Many interviewees felt that their race and other aspects of their identity negatively affected their pretrial treatment and outcomes.

Most interviewees said that their experience and outcomes were affected by their race or the race of the people working within the pretrial system. One interviewee said that the criminal legal system had racist roots and would never be in her favor as a Latina. She thought racism affected the entire criminal legal system rather than just one process or set of people: “Racism is like poison. It touches everything.” Some interviewees said that they felt that their gender, gender presentation, or sexuality played a role in their treatment. However, not all interviewees agreed. A few interviewees said that racism was something they tried not to dwell on, or said that they could not know if their race played a role in their experience because they did not have the option to experience the pretrial system as person with a different racial background.

The criminal justice system was created on racism, was created on capturing slaves. The slave patrol became officers. So it doesn’t serve you when you come from a minority background.

— 33-year-old Latina woman from Monmouth County

People pretty much judge me as soon as they look at me. I have a deep voice. I’m six feet tall, dark-skinned, low-cut. I am probably one of the nicest people you’ll ever meet. But when people first see me . . . I had a parole officer actually say to me that I had that “I-don’t-give-a-fuck-type attitude,” but he had never spoken to me before. Even one of my bosses has told me before, “Oh, I was so scared to talk to you; you look so mean.” And I know it’s not because I look mean, it’s because I’m tall and I’m Black.”

— 33-year-old Black woman from Monmouth County

I'm not one of the people that try to blame "The Man," as they would say, for my wrongdoings. I knew what I was doing when I did it. I got caught, I had to deal with that. I'm never gonna put my wrongdoings on anybody else — because, like I said, we all have choices in life.

— 27-year-old Black man from Essex County

You can't go through something as one race and, 10 minutes later, turn on another race and then see what would happen differently. So I can't necessarily say whether or not something happened because of my race.

— 31-year-old Black man from Mercer County

Some interviewees described interactions with judges, prosecutors, and police officers who they felt showed racial bias. In some cases, interviewees said that the White individuals who worked in New Jersey's pretrial system showed less interest or ability to listen to their perspective or take it seriously. A couple interviewees said they saw White people receiving different treatment than they received. They wondered if the reason they received different treatment was because of racial bias.

I had two judges. The first judge was trying to send me to state prison for five years, with a 42-month minimum. Then it got switched [and that] is when I got some relief. . . . The first judge was a Caucasian [man]. The second judge was a Black woman. And I just felt like she understood the situation more. When I was able to tell the judge all of that [information about her case], she understood. She really understood. She said that, unfortunately, she had to sentence me to something, but she was gonna sentence me to the lowest parameter on that charge. That's how I was able to get the one-year probation.

— 49-year-old Black woman from Essex County

I was in the courtroom and there was, like, me and five other people of color, mostly Black. There was one White girl, and the judge was reading her charges. I'm like, *Oh, those are the same charges I got*. He allowed her to go home that same day, but he said I had to stay. When I heard that I'm like, *Wow, me and her have the same exact charges, so why can't I go home and she gets to go home?* I don't know her case. Could be different circumstances. But that just made me think, *Wow, we can do the same exact thing but get different outcomes*.

— 29-year-old Black man from Burlington County

You're looked at differently because you're looked at, like, *Hispanics are crazy*. There are so many stigmas behind ethnicity, like that White people are more innocent. Racism is so entrenched, and oftentimes we don't even realize how entrenched it is within our systems or how we perceive people. Sometimes we're not even conscious that we're perceiving people in a certain light until it comes around and it's in your face.

— 33-year-old Latina woman from Monmouth County

She [a White woman the interviewee was detained with] was like, “I’d rather just go to jail now and get it over with and come home. I don’t wanna do a program [for addiction]. They think the program will be so much better for me; I shouldn’t want to go to prison.” But I never hear them asking people that look like me that. I never hear them saying, “Oh, prison wouldn’t be the place for you,” or “You wouldn’t like prison.” She was a nice young lady and everything, but when she was going into details of how she’s already been in trouble and how she’s already had run-ins [with police officers] with people overdosed around her. . . . When it comes down to us [Black people], if someone overdoses around you or you help them purchase the drugs, you’re held responsible. Anybody else would’ve been sent to prison. It’s not “Oh, let me give you a chance,” and “We really wanna push for you to go to this program because we don’t want you to go to prison.” They don’t do that for everyone else.

— 34-year-old Black woman from Essex County

This study’s quantitative analysis found that while meaningful improvements to New Jersey’s pretrial system have been made through CJR, racial disparities remain. This finding aligns with many interviewees’ experiences. They said that transparent processes and opportunities to share their perspectives can make people feel like they are being treated fairly and equitably. Because these factors were missing, interviewees were concerned that the decisions of system actors were subjective and potentially biased. They also said that the way they were treated by specific system actors could be perceived as racist.

DISCUSSION

For interviewees, an equitable system was one that treated them with dignity and respect, had transparent processes, and took the perspectives of individuals who were navigating the pretrial system as defendants into account. The absence of these qualities led interviewees to feel like decisions were made with partial or inaccurate information, which lessened their sense that the pretrial system treated people fairly and increased their sense that there were opportunities for bias.

Interviewees recommended approaches that they thought would make New Jersey’s pretrial system fairer. They suggested that system actors increase communication and transparency about pretrial processes, take a more holistic approach to risk assessment, use less restrictive monitoring conditions, and pay more attention to the relationship between detention and plea deals.

5

Envisioning a More Equitable Pretrial System

SUMMARY OF FINDINGS

The impact study found that New Jersey’s 2017 Criminal Justice Reform (CJR) led to some noteworthy improvements that were experienced in a similar way by both Black people and White people. Specifically, law enforcement officers were more likely to immediately release people from both groups on a summons rather than book them into jail on a warrant. Individuals from both groups were released from jail more quickly after the reforms went into effect – so there were fewer people of both racial groups booked in jail for long periods of time following arrest. However, these improvements did not meaningfully reduce preexisting disparities between the two groups in any of the outcomes studied. From a broader perspective, the largest disparities – which future reform efforts may have the greatest opportunity to reduce – were found at the front end of the system and were seen in rates of arrest and initial jail bookings.

These persistent disparities have implications beyond the legal system, since the experience of being arrested, being assigned pretrial monitoring conditions (especially electronic monitoring), or being detained in jail – even for a few days – has been linked to a host of negative health, mental health, and well-being consequences. These consequences include poorer physical health, an increased risk of chronic illnesses, depression, anxiety, strained relationships with family members, job loss, income loss, and subsequent legal system involvement.¹ They are not just borne by the individual who experienced the legal system as a defendant, but may also be devastating for family members, children, and communities. The extent and nature of the collateral consequences of detention and pretrial conditions were made clear in the study’s interviews and the findings from the participatory Photovoice project.²

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1. Geller, Fagan, Tyler, and Link (2014); Sugie and Turney (2017); Dobbie, Goldin, and Yang (2018); Lowenkamp, VanNostrand, and Holsinger (2013); Holsinger and Holsinger (2018); Pager (2003); Brinkley-Rubinstein (2013); Lowenkamp (2022); Weisburd et al. (2021).
 2. For the more information, and to view the full Photovoice virtual gallery, see Lewy and Wasserman (2024).

While the interviewees for the qualitative study said that CJR’s elimination of money bail has improved the fairness of the system, the research team’s analysis of interview data revealed features of the post-CJR pretrial system that are perceived as unfair and inequitable. In sum, the interviewees pointed to a need for a legal system that considers each person’s voice and circumstances, treats each person with respect, is transparent and easier to navigate, employs the least restrictive release conditions when possible, and employs staff members who better reflect the diversity of the populations they serve.

Taken together, the research team’s quantitative and qualitative findings — as well as findings from MDRC’s evaluation of the reforms in 2019 — suggest that broad bail reform policies such as CJR can reduce the footprint of legal system involvement, but they are not a salve for equity issues or, specifically, racial disparities. This finding is in line with a small but growing body of research on the impact of bail reform efforts on racial disparities, including annual reports released by the New Jersey Administrative Office of the Courts that document the persistent presence of racial disparities in the New Jersey jail population.³ This report’s findings suggest that additional approaches to improve racial equity and the perceived fairness of the system are needed.

POTENTIAL APPROACHES FOR IMPROVING PERCEPTIONS OF FAIRNESS AND RACIAL EQUITY

To identify reforms that are more effective in reducing racial disparities, research organizations and jurisdictions should center the groups that are most burdened by the legal system and seek to address the root causes for their differential outcomes. The New Jersey Criminal Justice Reform Advancing Racial Equity (NJ CARE) Study began this work by documenting disparities and analyzing the perspectives of a majority-Black group of individuals who had experienced New Jersey’s pretrial system. (See Chapters 3 and 4.) A thematic analysis of their perspectives and recommendations, the implications from the impact study, and the broader literature on this topic point to a few potential approaches for improving racial equity and perceptions of fairness in the legal system.

It is worth noting that many of the approaches highlighted below are universal rather than specifically targeted toward a racial group or other subgroup. This decision may be counterintuitive given the study finding that broad bail reform efforts like CJR are not likely to remedy racial disparities. However, these approaches were specifically informed by the study’s interviewees, who had experienced the pretrial system firsthand as defendants. To design bail reform efforts that address equity, it is crucial to center the voices of those individuals and meet their needs.

3. Laaninen (2022); Grant (2018); Grant (2019); Grant (2021).

There are several potential approaches to improving perceptions of fairness and racial equity in the system:

- reducing initial contact with the legal system
- incorporating procedural justice techniques to improve police-community relationships
- elevating the voices of individuals who navigate the pretrial system as defendants
- enhancing transparency and communication
- employing the least restrictive conditions of release possible and offering supportive services
- engaging prosecutors in reform efforts
- diversifying staffing

Importantly, New Jersey is already implementing several of these approaches, which are described below. Many of these approaches, while promising, have not been rigorously evaluated and should be studied for their effectiveness in reducing racial disparities.

Reducing Initial Contact with the Legal System

As the impact study showed, the largest disparity between the Black and White groups was observed at the front end of New Jersey’s system – that is, in arrest rates. This disparity presents the greatest opportunity for change and calls for targeted approaches to address the complex factors that are likely to lead someone to be arrested. Earlier research and the interviewees point to two approaches, which are outlined below: improved community support and resources, and community-based safety models and alternatives to arrest.

Community Support to Reduce Law Enforcement Involvement and Improve Public Safety

Racial and ethnic disparities in the criminal legal system can be driven by (and can drive) inequities in other social systems – such as health care, housing, employment, and education. In communities where support and opportunities are lacking, there is often a greater law enforcement presence, and, subsequently, more people come into contact with the legal system.⁴ This is especially prevalent in communities of color, which are often underresourced and are more likely to experience a heavy police presence.⁵ Thus, successful strategies to reduce racial disparities in the criminal legal system may incorporate adjacent systems and

4. Wakefield (2022); Mental Health America (n.d.).

5. Hinton and Cook (2021); Sharkey, Taylor, and Serkez (2020); Bryant Jr. (2019); Ray et al. (2021); Lombardo (2019).

community approaches.⁶ Study interviewees suggested that communities need better support systems that reduce poverty, improve employment and educational opportunities, and support physical and mental health in their communities. While not an explicit function of the criminal legal system, improved community services have been shown to mitigate some of the systemic inequities that drive arrests and involvement with the legal system.⁷ In one specific example, a large randomized controlled trial of one supportive housing initiative found that the program led to reduced police interactions and reduced jail time.⁸

Relatedly, interviewees described a need for alliances and support that would improve safety in their communities, rather than punitive policing approaches. Several interviewees mentioned the Newark Community Street Team, an innovative approach to improving public safety in New Jersey. There has not been an impact evaluation of the program's effectiveness at the time of writing, although a process evaluation details the program model and its potential to improve public safety.⁹ The Newark Community Street Team's outreach workers are trained in trauma-informed crisis intervention techniques and comprise Newark residents, many of whom have experienced New Jersey's legal system as defendants. The program provides supportive services to the community that are intended to reduce crime (and thus law enforcement involvement), such as employment and educational opportunities, hardship assistance, and legal support.

Alternatives to Arrest

There are several alternative-to-arrest models that are designed to reduce people's contact with law enforcement — and subsequent entanglement in the legal system — when they experience acute crisis situations. Newark Community Street Team workers are trained to intervene and deescalate high-risk conflicts with the goal of avoiding arrest and settling disputes. They are called in by law enforcement officers to help with mediation and deescalation in situations involving high-risk active disputes.¹⁰ Outside New Jersey, there are numerous alternative-to-arrest programs that are designed to limit arrests during crises while restoring public safety. For example, Crisis Intervention Team programs, which have been widely adopted, train law enforcement officers how to respond to people experiencing a mental health crisis with the goal of helping them access treatment rather than placing them in the criminal legal system.¹¹ Mobile crisis teams are groups comprised solely of mental health professionals who respond to mental health crises — at the request of either law

6. National Academies of Sciences, Engineering, and Medicine (2023).

7. Sharkey, Torratts-Espinosa, and Takyar (2017). One survey found that 14 percent of people held in state or federal prison, and 26 percent of people held in jail, had a mental health problem—rates that are about three and five times that of the general population. See also Bronson and Berzofsky (2017).

8. Cunningham et al. (2021).

9. See Leap, Lompa, Thantu, and Gouche (2020).

10. For more information on the Newark Community Street Team, see Leap, Lompa, Thantu, and Gouche (2020).

11. For more information, see CIT International (n.d.).

enforcement or community members – and are designed to reduce arrests.¹² Coresponder units are groups of mental health professionals and crisis intervention-trained law enforcement officers who respond to mental health crises, and they are designed to prevent arrests. Additionally, 911 dispatch diversion programs aim to reduce police contact with people who are experiencing a mental health crisis by diverting 911 calls to a team of trained mental health and social services professionals.¹³ A descriptive study of a 911 dispatch diversion program suggested that it may curtail police contact.¹⁴ Further research on the effectiveness of these programs is needed.

Incorporating Procedural Justice Techniques to Improve Police-Community Relationships

As described above, there were large racial disparities in arrest rates. When offering recommendations to make the pretrial system seem fairer, several interviewees described a need for better relationships between communities and law enforcement. Scholars have suggested incorporating procedural justice and reconciliation frameworks into policing approaches as a way to improve community relationships and restore trust.¹⁵ This approach involves law enforcement officers actively seeking the input of the community to shape prospective policing approaches and acknowledging historical injustices and harms. A large randomized controlled trial in Atlantic County, New Jersey, is currently testing whether the practice of incorporating procedural justice techniques during traffic stops improves police-community relationships.¹⁶ The State of Connecticut is also tracking disparities in police interactions with civilians and has implemented reforms that are aimed at improving police-community relationships, and they appear to have successfully reduced racial disparities in traffic stops.¹⁷ Another example is a program that builds a community council – comprising law enforcement officers; people who have been directly impacted by the criminal legal system as defendants; individuals from social services groups, faith organizations, and civil rights organizations; and other community stakeholders – that collaboratively determines approaches for improving public safety in the community.¹⁸ More research into the effectiveness of these approaches is needed.

12. See Bureau of Justice Assistance (n.d.).

13. For more information, see the Council of State Governments Justice Center (2021).

14. See Beck, Reuland, and Pope (2020) and Bach (2020) for more information about this program.

15. O'Brien and Tyler (2019).

16. For more information, see National Institute of Justice (2021).

17. Parker, Ross, and Ross (2024); Connecticut Racial Profiling Prohibition Project (n.d.).

18. For example, the Strengthening Police and Community Partnerships (SPCP) facilitated-dialogue program, developed by the United States Department of Justice, formed a council in Erie, Pennsylvania – comprising police officers; individuals from social services groups, faith organizations, and civil rights organizations; and other community stakeholders – that met monthly over a span of several years. Cities across the country have participated in the SPCP program and have formed similar councils. For more information, see United States Department of Justice Community Relations Service (2022) and United States Department of Justice Community Relations Service (2024).

Elevating the Voices of Individuals Who Navigate the Pretrial System as Defendants

Interviewees described a pretrial process that had little regard for hearing their perspectives or understanding the full circumstances of their arrest. Many wished that their point of view had been considered during the release-condition decision-making process — including any factors that may have contributed to their arrest, such as mental health crises. Instead, they could only listen as system actors described their case or character in terms they felt were distant and inaccurate. Interviewees also felt that the pretrial process put too much weight on their history with the legal system and not enough on their positive accomplishments and contributions to their families and communities. They wanted to share more about who they were as individuals, parents, and community members. Without being able to share their side of the story, they felt that system actors did not have accurate information about their case. This perception — that court actors had inaccurate information and did not seem interested in understanding their perspective — led some interviewees to feel that the court was biased against them. This finding also points to a tension between individuals’ desire to share their stories and defense attorneys’ wish that their clients say as little as possible at hearings to avoid inadvertently incriminating themselves.

While the research on this strategy is still in its early stages, there is some evidence that appointing an advocate to work with individuals after their arrest could enable the individuals to share more about their background and circumstances with the court without incriminating themselves. A pilot program run by the Defender Association of Philadelphia appointed “bail advocates” that interviewed individuals following their arrest to gather information that could be used to advocate for their release from jail pretrial. A quasi-experimental study found that this program led to a reduction in racial disparities in pretrial detention.¹⁹ If the program could be expanded to cover all cases entering the system, researchers estimated that it could prevent racial disparities from widening between the point of arrest and pretrial detention, as was typically the pattern in Philadelphia’s pretrial system. One NJ CARE interviewee independently suggested something very similar. Reducing public defender caseloads (more below) so that individuals have more time to share their stories with their defense attorney ahead of hearings may be another way to ensure that individuals feel heard during this process and that their legal team can best advocate on their behalf in court.

Enhancing Transparency and Communication

Many interviewees described feeling isolated and confused during much of the pretrial process, which worsened their mental health and well-being. Interviewees who relied on public defenders described feeling more isolated and confused than others, since their public defenders appeared to be overloaded with cases and could give them very little individual attention or information — an experience that is not unique to New Jersey. Interviewees said that the fact that they did not receive important information about their cases, such as the date of

19. Heaton (2021).

their next court hearing, eroded their trust in the system. Interviewees suggested improving existing channels of communication between the courts and the individuals navigating the system as defendants; one option would be reducing the caseloads of public defenders so that they have more time for their clients. A bail advocate system — such as the one described earlier — may also help improve communication and understanding between parties. Ensuring that individuals who are detained are also able to promptly and regularly communicate with their representatives, families, and friends is a particular challenge. Communication systems for people who await trial in jail, including phones and email, should be easily accessible.

Employing the Least Restrictive Conditions of Release Possible and Offering Supportive Services

A common interviewee critique of New Jersey’s pretrial system after CJR was that pretrial monitoring and electronic monitoring — while less onerous than detention — still put considerable time, logistical, and administrative burdens on interviewees that affected their well-being. Additionally, pretrial detention was described as destabilizing and traumatic, which interviewees felt pressured people to accept plea deals just so that they could be released. Research shows that people who are detained pretrial are more likely to plea and to do so earlier than people who are not detained.²⁰ This finding is an issue of racial equity since the NJ CARE impact findings showed that Black people entered New Jersey’s pretrial system and jails at higher rates. Two recent MDRC studies suggest that jurisdictions can use less restrictive pretrial supervision levels and reduce their use of electronic monitoring while upholding court appearance rates and minimizing pretrial rearrests — particularly for individuals who are assessed to have a low or moderate risk of rearrest or missing a hearing.²¹ Some jurisdictions, including the state of New Jersey, are currently considering expanding the supportive services referrals component of their pretrial supervision programs or even shifting toward voluntary services-oriented models. Recently, legislation was proposed in New Jersey for a one-year pilot program that would support and connect individuals to services, such as substance abuse, mental health, health care, housing, and employment services.²² Improved connections to supportive services and a reduced use of punitive pretrial release conditions and detention may be another way to improve equity in New Jersey’s pretrial system.

Engaging Prosecutors in Reform Efforts

Interviewees were surprised by the amount of power prosecutors held. Prosecutors in New Jersey are influential decision-makers who steer the course of cases in many ways. For example, they are given the power to determine whether an individual will be detained following the first appearance hearing and subject to a subsequent detention hearing; if the

20. Sacks and Ackerman (2012).

21. Valentine and Picard (2023); Anderson, Valentine, and Holman (2023).

22. For more information, see New Jersey Reentry Corporation (2023) and A.B. A5268, Assembly Judiciary Committee, 2022-2023 Sess. (New Jersey, 2023), https://www.nileg.state.nj.us/bill-search/2022/A5268/bill-text?f=A5500&n=5268_S1.

prosecutor does not motion for detention at the first appearance hearing, then the judge must release the individual. (Judges cannot otherwise detain people at this stage in the process.) Prosecutors motioned for detention in about one-half of cases where someone was arrested on a warrant in 2018.²³ Interviewees frequently perceived prosecutors to be driving release conditions and plea deal decision-making rather than judges, which was surprising to them. It often felt to them like judges and even public defenders tended to defer to the prosecutors' demands. These perceptions are in alignment with much of the broader literature on prosecutorial power, which characterizes prosecutors as having "enormous" power and suggests that prosecutors may, in fact, be the most powerful actors in the criminal legal system.²⁴ Interviewees lamented that the system felt stacked against them, which suggests that engaging prosecutors is crucial to implementing meaningful reforms and changing the culture that shapes disparities in the pretrial process. Research has confirmed the influential role that prosecutorial culture has in affecting racial disparities in outcomes, such as felony conviction rates and prison sentences.²⁵

Furthermore, plea deals have become one of the primary ways that cases are disposed in the United States. As many as 90 percent of cases in the federal criminal legal system end in a plea.²⁶ Pretrial detention plays a significant role in people's decision to plead guilty.²⁷ Importantly, Black people accused of crimes — in particular, Black men — are more likely to be held in detention pretrial than White people accused of crimes, potentially increasing the pressure on this group to plea bargain. The American Bar Association has introduced recommendations to reform the use of plea bargaining, including the recommendation to eliminate prosecutors' use of pretrial detention to induce pleas.²⁸

Diversifying Staffing

Lastly, an underlying theme behind several interviewees' stories was the importance of diverse staffing within the pretrial system. Interviewees said they felt that their individual circumstances were more closely considered and that they were treated with greater empathy by staff members of the same race as them, which helped humanize the process for them and was perceived to have led to fairer decision-making.

The available research on this topic is in alignment with interviewees' wishes for a more diversely staffed court system. Studies have found that law enforcement agencies in which people of color and women comprise larger shares of the staff — including at leadership levels — are associated with lower arrest rates in Black communities and fewer instances of

23. Grant (2019).

24. Sklansky (2018).

25. Mitchell, Mora, Sticco, and Boggess (2022).

26. Gramlich (2019).

27. Sacks and Ackerman (2012).

28. Johnson (2019).

police officers drawing their weapons.²⁹ A study of staff diversification among judges found that as the share of Black judges increased, the Black-White gap in incarceration rates fell by up to 7 percentage points. This change was not driven by the individual decision-making of Black judges, but rather by changes in decision-making among White judges as their peer group became more diverse.³⁰

CONCLUSION

While New Jersey’s 2017 CJR led to important achievements in terms of reducing custodial arrests, shortening the length of initial jail stays, and eliminating the use of money bail, the NJ CARE study found that the reforms did not reduce racial disparities in the pretrial process. The study also explored and elevated people’s experiences with New Jersey’s pretrial process after the reforms, including their perceptions of fairness — an element of an equitable system — and how the experiences affected their health and well-being. Ultimately, the study findings suggest that more targeted approaches that uplift the populations that have been most historically impacted, reduce criminal legal system involvement, and incorporate procedural justice principles should be further evaluated for their potential to reduce disparities. Finally, jurisdictions and research organizations should be mindful to engage communities and people who have navigated the legal system as defendants when designing future equity-focused reform efforts, since they are experts on what people going through the system need the most to be successful and to experience a level playing field. Their participation will be vital to build trust and create sustainable community-driven change.

29. Ba, Knox, Mummolo, and Rivera (2021); Legewie and Fagan (2016); Hoekstra and Sloan (2022); Bulman (2019).

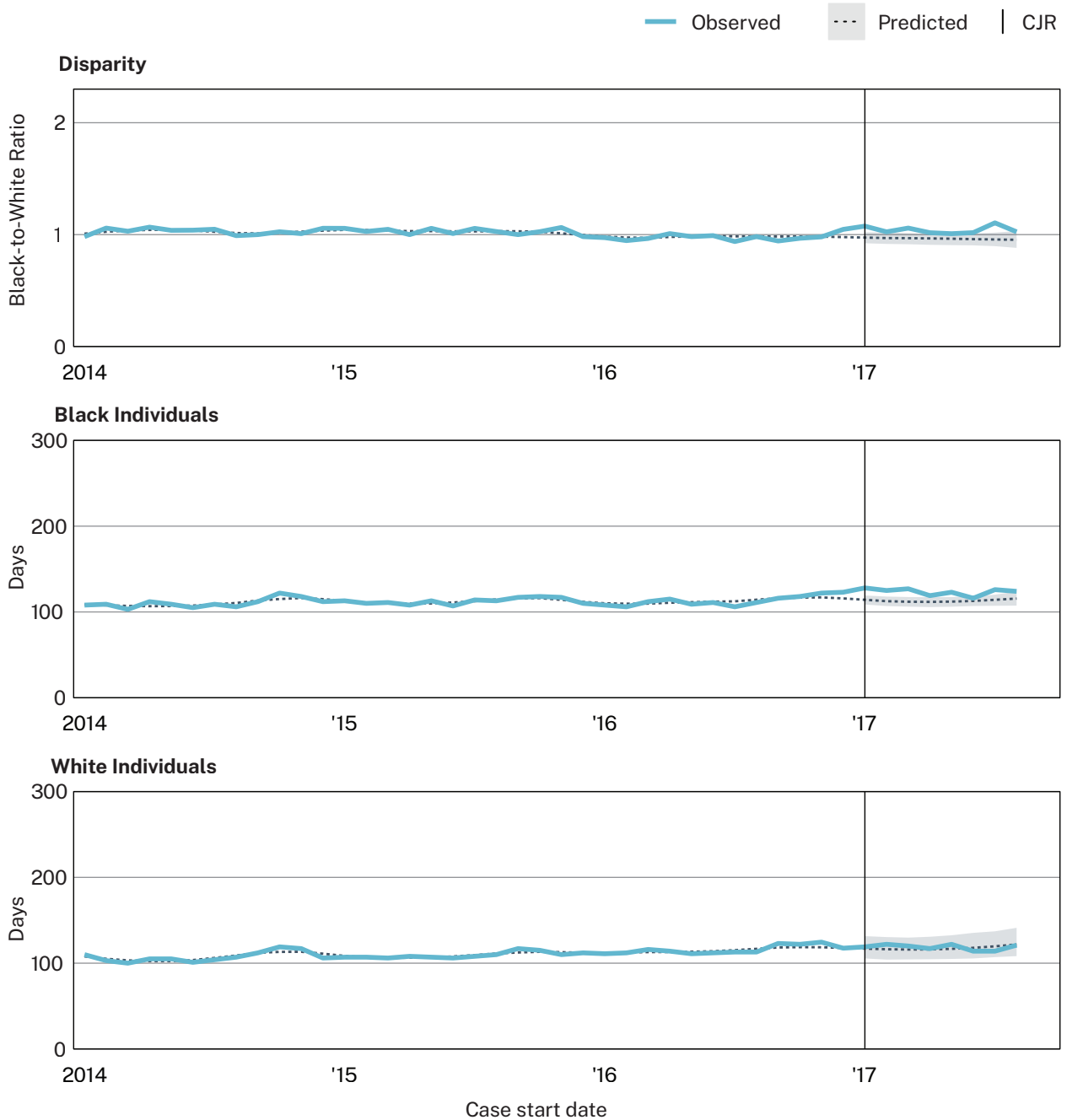
30. Harris (2024).

APPENDIX

A

Additional Impact Study Figures

FIGURE A.1
Median Amount of Time from Arrest to Case Disposition, Full Sample

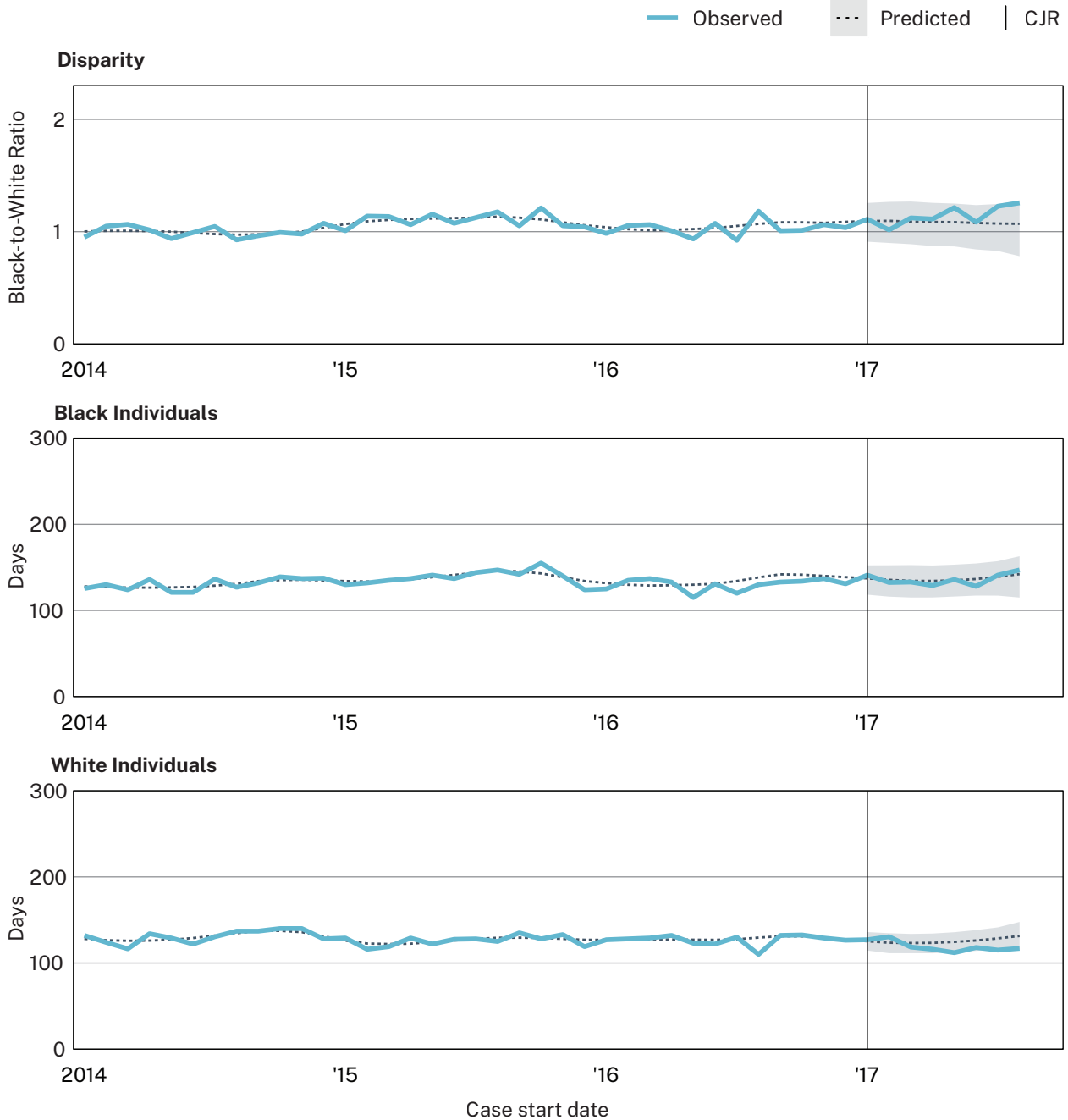


SOURCE: MDRC calculations based on data provided by the New Jersey Administrative Office of the Courts.

NOTE: CJR = Criminal Justice Reform.

The analysis for this figure was limited to arrest events that took place between January 2014 and August 2017 to allow for 14 months of follow-up. Arrest events with a length of time from arrest to disposition that was greater than 14 months during the study period were excluded from the analysis to reduce bias in the sample.

FIGURE A.2
Median Amount of Time from Arrest to Case Disposition for
Individuals Who Were Initially Booked into Jail

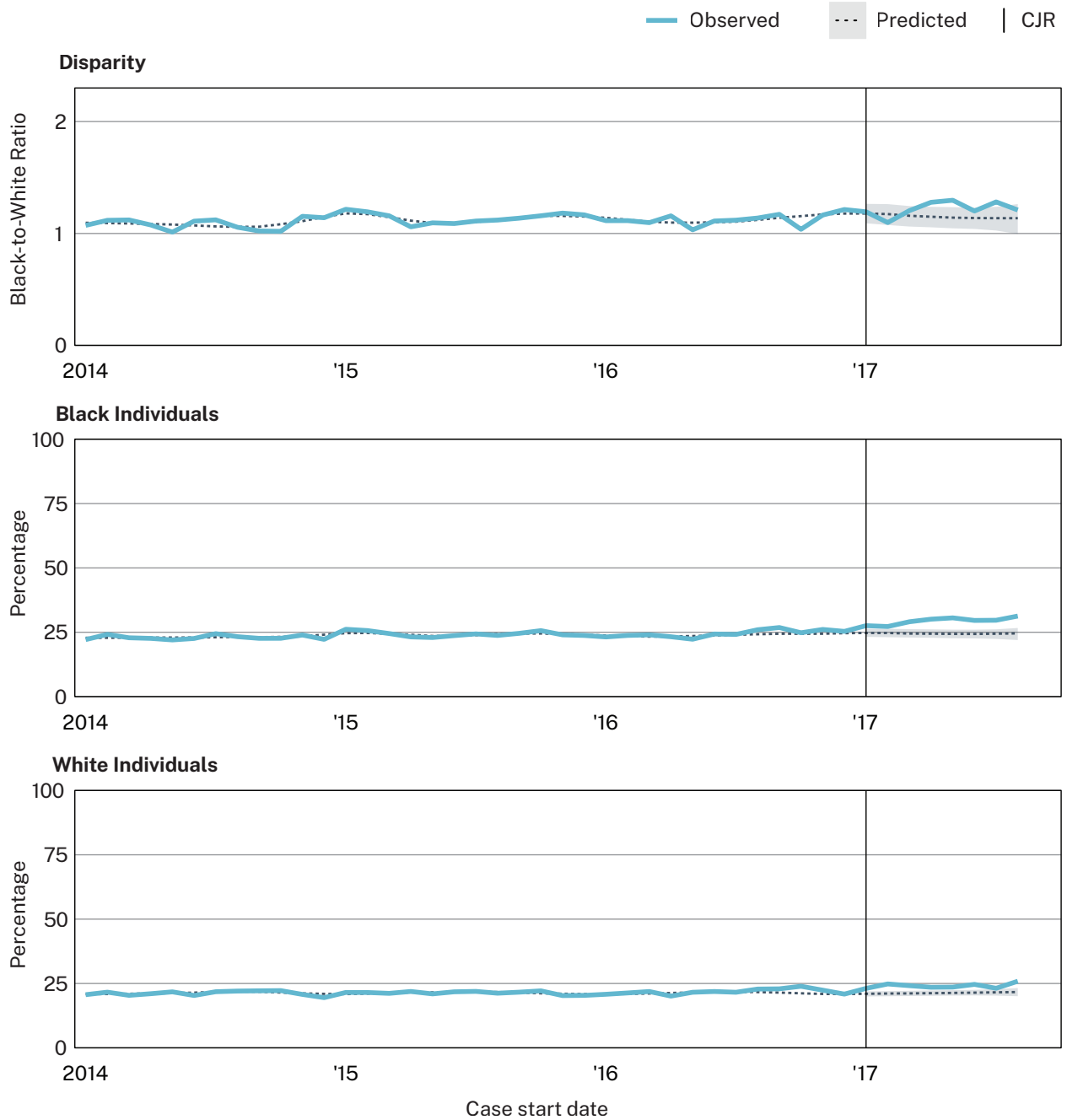


SOURCE: MDRC calculations based on data provided by the New Jersey Administrative Office of the Courts.

NOTE: CJR = Criminal Justice Reform.

The analysis for this figure was limited to arrest events that took place between January 2014 and August 2017 to allow for 14 months of follow-up. Arrest events with a length of time from arrest to disposition that was greater than 14 months during the study period were excluded from the analysis to reduce bias in the sample.

FIGURE A.3
Plea Deal Rate, Full Sample

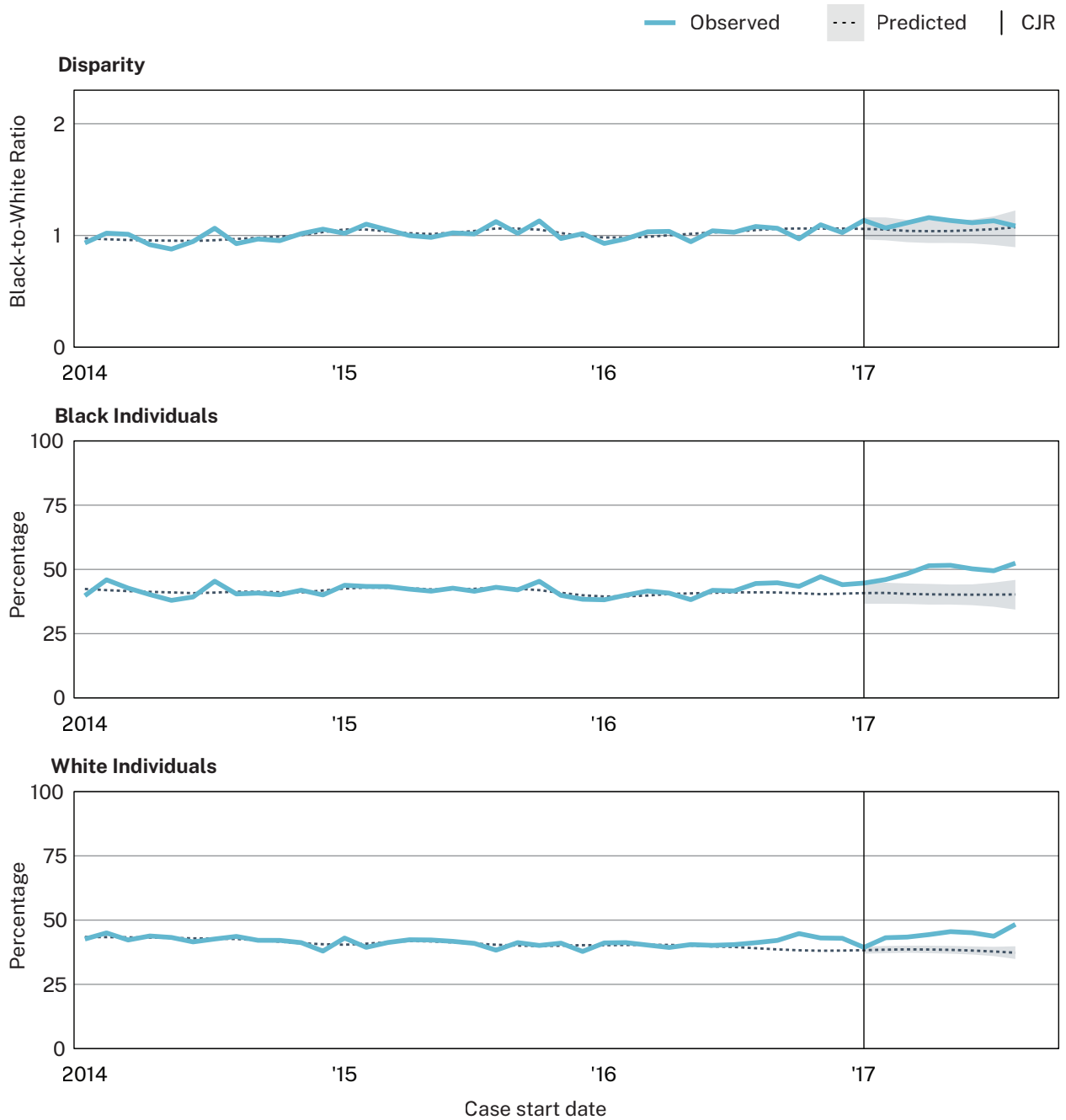


SOURCE: MDRC calculations based on data provided by the New Jersey Administrative Office of the Courts.

NOTE: CJR = Criminal Justice Reform.

The analysis for this figure was limited to arrest events that took place between January 2014 and August 2017 to allow for 14 months of follow-up. Arrest events with a length of time from arrest to disposition that was greater than 14 months during the study period were excluded from the analysis to reduce bias in the sample.

FIGURE A.4
Plea Deal Rate for Individuals Who Were Initially Booked into Jail



SOURCE: MDRC calculations based on data provided by the New Jersey Administrative Office of the Courts.

NOTE: CJR = Criminal Justice Reform.

The analysis for this figure was limited to arrest events that took place between January 2014 and August 2017 to allow for 14 months of follow-up. Arrest events with a length of time from arrest to disposition that was greater than 14 months during the study period were excluded from the analysis to reduce bias in the sample.

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