

Decarcerating New Jersey

**A TRANSFORMATIVE
VISION OF JUSTICE**



Table of Contents

The Crisis of Mass Incarceration	4
Leading the Nation in Decarceration	6
Rejecting Regressive Fearmongering	8

A Proven Foundation	10
Cash Bail Reform	10
Public Health Emergency Credits	12
Cannabis Legalization and Decriminalization	16

Expanding Freedom and Centering Humanity	18
Categorical Clemency	19
Mandatory Minimums	20
Compassionate Release	22
Drug Decriminalization	22

A Transformative Vision of Justice	24
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The Crisis of Mass Incarceration



There's no question: the United States is facing a mass incarceration crisis – and continues to incarcerate people at a higher rate than any other country in the world.

The carceral system has devastated families, fractured communities, and deepened racial inequities throughout the nation.

For decades, the ACLU of New Jersey has worked to reduce the number of people in state prisons and jails by advocating for more releases and fewer incarcerations.

We have made enormous strides through victories in the courtroom and in the Legislature – like passing a one-of-a-kind law to release nearly 9,000 people early during the COVID-19 pandemic, or arguing a landmark case, *State v. Comer*, to ensure that no child is forced to spend their entire life in prison and allow nearly 100 young people to petition for early release. Efforts like these have helped New Jersey reduce its prison population by [more than 50 percent](#) since [2011](#).¹

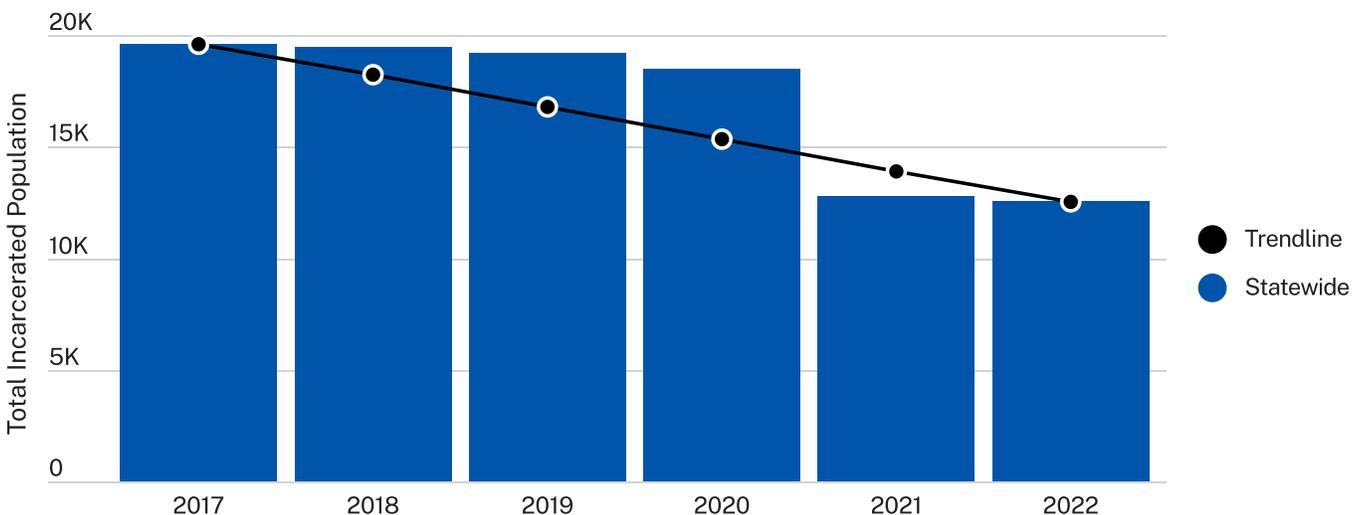
But at its core, New Jersey’s carceral system remains rife with injustice. The state continues to incarcerate far too many people and has [the highest rate of racial disparity](#) in the entire nation,² making decarceration fundamental to racial justice here, and beyond. Comprehensive decarcerative

progress means more than releasing incarcerated people at the largest scales – it must encompass so much more, including ensuring that previously incarcerated people are not subjected to excessive supervision, invasive surveillance, or overbearing parole and probation programs.

We must not allow those who profit from keeping people in prison to drive policies that continue to harm families, communities, and incarcerated people. Inaction will cost lives, tear families apart, undermine public health, and hold communities back socially and economically. Critics often claim that decarcerative policies would harm public safety – but data show that New Jersey’s efforts to reduce

Total Incarcerated Population in New Jersey State Correctional Institutions and Satellite Units

Total incarcerated population dropped by 31% from 2020 to 2021 and has stayed at a low level through 2022, with decreases across all prison complex groups.



"Miscellaneous" includes Halfway Houses, County Jails, EMHCF (Emergency Medical Home Confinement Furlough), St. Francis, and Re-entry

its incarcerated population did not have any [meaningful effect](#) on crime.³ We must address root causes and not be distracted by red herrings.

We must reclaim our vision for a just and equitable New Jersey – a shared future that prioritizes racial justice, centers the voices of those who have historically not been protected by our systems and institutions, and leads the nation in protecting and expanding civil rights. We must not let fear or self-serving political motivation lead us to repeat a harmful history of criminalization that will fuel over-policing and mass incarceration.

LEADING THE NATION IN DECARCERATION

In recent years, New Jersey has served as a national leader in decarceration largely thanks to the work of the ACLU-NJ, impacted families, and activists across the state.

From 2017 to 2022, New Jersey’s prison population plummeted by more than 45 percent. During the pandemic, New Jersey [released a higher share](#) of its prison population than any other state in the nation.⁴ This drop was predominately due to a one-of-a-kind law to release people



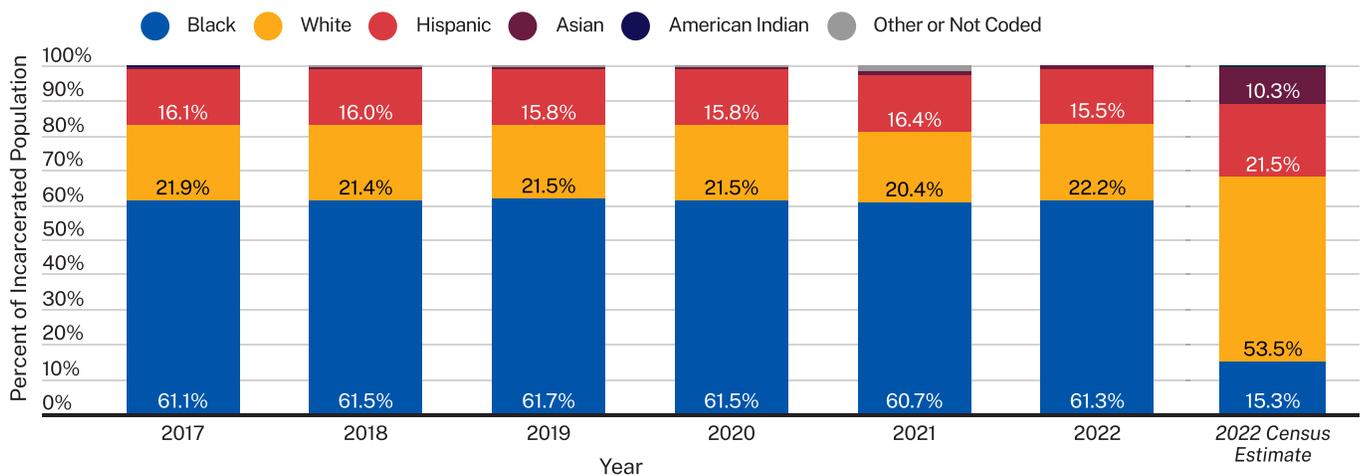
early during the COVID-19 pandemic. Despite this marked reduction, far too many people remain incarcerated in New Jersey. And, while the overall number of incarcerated people has declined, racial disparities remain just as stark. From 2017 to 2022, Black people accounted for about 60 percent of New Jersey’s incarcerated population despite comprising 15 percent of the state’s overall population – the worst Black to white racial disparity in the country.

For New Jersey to remain a national leader in criminal legal reform, we must prioritize social and racial justice. That begins with adopting non-punitive alternatives to incarceration that expand access to opportunity and resources – and implementing data- and research-informed approaches that are developed in collaboration with impacted communities.

New Jersey’s prison population is also growing older. In 2017, nine percent of incarcerated people were 55 or older. By 2022, that figure jumped to 14 percent (See the graph on page 22).

Incarcerated Population by Ethnic Identification

Black people are highly over-represented in NJ's incarcerated population, accounting for ~60% while composing ~15% of the overall state population.



This data sometimes reflects law enforcement labeling conventions for identities that are not self-reported by the population. For the purpose of data integrity, law enforcement labeling conventions are retained here.

"Male Offenders in Main Facilities" includes South Woods, Northern State, NJ State Prison, Southern State, Bayside, East Jersey, CRAF, and Midstate.

"Miscellaneous" includes Halfway Houses, County Jails, EMHCF (Emergency Medical Home Confinement Furlough), St. Francis, and Re-entry.

"Youth Complex" includes Garden State, Mountainview, and Wagner.

Source for overall state population and 2022 Census Estimate: <https://www.census.gov/quickfacts/NJ>

REJECTING REGRESSIVE FEARMONGERING

In addition to moving our criminal legal system forward, it's crucial to ensure that it does not regress.

Every point of progress in our criminal legal system required immense coordinated advocacy and partnered leadership that often stretched on for many years. Each of these efforts faced intense opposition, and sometimes virulent backlash.

Consequently, with any step forward, there are critics hoping to move us back to the past: many policymakers – nationally and in New Jersey – are claiming that we need more “tough-on-crime” policies to combat a purported rise in crime. It's a political talking point that has been recycled throughout history. In keeping with that tradition, some New Jersey lawmakers have proposed policies that would increase criminal penalties for certain offenses and [roll back bail reform](#).⁵

This is deeply problematic. For one, there is no meaningful spike in crime. In New Jersey, violent crime is actually [trending downward](#).⁶

Second, there is no reason to believe that incarcerating more people for longer periods will improve public safety. The United States is notorious for having

the highest rate of incarceration and the largest prison population in the world. If incarceration improved public safety, the United States would be the safest nation in the world. But that's not the case.

It's clear that we can't criminalize our way to public safety. In fact, criminalizing more activities and making our legal system more punitive will only heighten our crime statistics – creating a false, self-perpetuating cycle. There would be more arrests, fueling calls for bigger police budgets and leading to increased police presence.

And this would not impact all communities equally. Black and brown communities bear the brunt of aggressive policing and its harmful, often deadly, consequences. Policies like the [failed drug war](#)⁷ and the [1994 federal crime bill](#)⁸ show this quite clearly.

Some lawmakers and pundits will use every step toward repairing the criminal legal system to spread misinformation, stoke fears, and reverse progress. It's part of a playbook that's been used time and time again. But it's crucial to push back against this cycle. Only then can we achieve change at the largest scale and ensure New Jersey remains a national leader in racial and social justice.



James Matthew Daniel/ACLU

A Proven Foundation

In recent years, New Jersey has been a national leader in decarceration. Policy changes we've achieved with our partners have proven that releasing incarcerated people at the largest scale is possible – and fundamental for racial justice here, and beyond.



CASH BAIL REFORM

Across the country, the cash bail system drives incarceration and criminalizes poverty. People who cannot afford to pay bail – but have not been found guilty – are forced to stay in jail until trial, putting their safety, housing, jobs, and families at risk.

For years, New Jersey followed traditional cash bail models. But in 2014, that began to change. Following years of advocacy from the ACLU-NJ and partners from across the ideological spectrum, lawmakers passed a bipartisan piece of legislation mandating a presumption of release for almost all defendants and equipping judges with

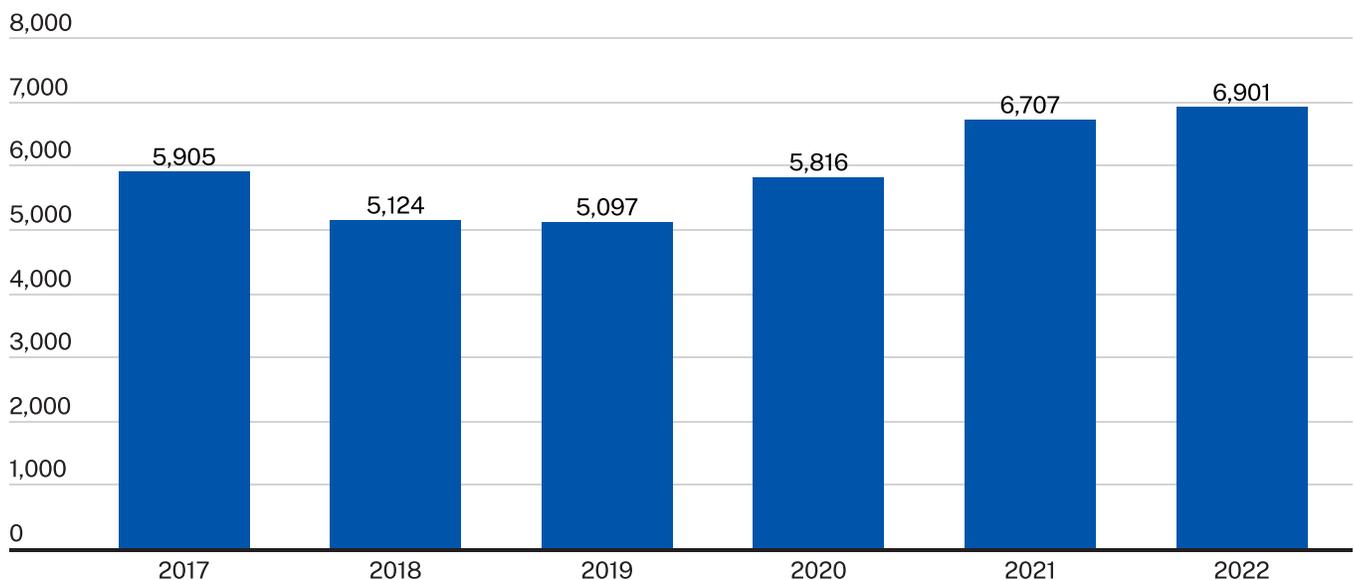
more data to inform their pretrial release decision-making. Additionally, nearly [two-thirds of voters approved](#) a constitutional amendment that was required to reform the cash bail system.⁹ This victory was a product of overwhelming support from the public and the collaboration of a wide array of stakeholders.

Soon after, opponents in the bail bond industry tried to halt the law in court. The ACLU-NJ partnered with impacted community members, educated the public, and appeared in federal court to ensure that bail reform could continue as a necessary change in fairness – all as a part of a longer decarceration movement that we’re still fighting for today.

The 2014 legislation officially went into effect in 2017. Now, with five full years of data, it is clear that bail reform has been a resounding success. The pretrial jail population plummeted from around 9,000 people before the reforms to just over 5,000 people in 2018 and 2019. The number of incarcerated people stayed low in the beginning of 2020 and [dropped to just over 4,000](#) at the first months of the pandemic.¹⁰ But COVID-19 caused New Jersey to suspend criminal trials for long periods and when trials resumed, they did so at [far slower rates](#) than before.¹¹ This led to a significant uptick in the number of people held pretrial and that increase has persisted until today. Still, even with people

Non-sentenced Pretrial Jail Population by Year

The pretrial jail population increased by 15% from 2020 to 2021 and has remained at this elevated level in 2022.



incarcerated at the highest rate since the reforms, there have been significant gains. By 2020, just 0.2 percent of people detained pending trial were held on bail of \$2,500 or less, according to a [judiciary criminal justice report](#).¹² In a 2012 report, that share was an alarming [12 percent](#).¹³

The analysis also showed that reforming the bail system resulted in an insignificant increase in serious crimes. Indictable criminal activity by defendants released pretrial [remained below 14 percent](#) for three years.¹⁴ The recidivism rate for serious, violent crime is at [only one percent](#), and people are also showing up in court at higher rates.¹⁵

There are now thousands of people who kept jobs, stayed connected with family, and maintained their housing because they were not incarcerated waiting for their case to be heard.

PUBLIC HEALTH EMERGENCY CREDITS

The COVID-19 pandemic had a monumental impact on our nation's incarcerated population. Prisons and jails have cramped living quarters, poor health care, and unsanitary conditions, making adherence to COVID-19 public health guidelines nearly impossible.

Consequently, throughout the pandemic, incarcerated people faced dire threats to their health. New Jersey quickly earned the shameful distinction of having the [highest COVID-19 prison death rate](#) in the nation.¹⁶

We knew the best relief from oppressive conditions was to release people. In an urgent effort to save lives, the ACLU-NJ and partners shared our vision with legislators for a first-of-its-kind law – the Public Health Emergency Credit (PHEC) – that reduced sentences by four months for each month of the declared state of emergency.

We partnered with impacted families, advocacy organizations, and activists across the state to push for the bill. After rapid, relentless advocacy, legislators passed PHEC and enabled people nearing their release dates to leave prison up to eight months early.

Under PHEC and related litigation, nearly 9,000 people were released from prison.

DECARCERATING NEW JERSEY

PUBLIC HEALTH EMERGENCY CREDITS

March 9, 2020

Gov. Murphy declares a public health emergency.

March 23, 2020

A signed consent order negotiated by ACLU-NJ and partners results in the release of nearly 700 people from county jails.

May 1, 2020

Rory Price, who is scheduled to be released in weeks, dies after contracting COVID-19 while incarcerated. Marshall Project reports that New Jersey has the nation's worst death rate of COVID-19 in prisons.

May 14, 2020

ACLU-NJ, New Jersey Prison Justice Watch, Salvation and Social Justice, and families of incarcerated people host a town hall calling on lawmakers to act.

May 28, 2020

New Jersey Prison Justice Watch leads a funeral procession of over 450 cars for people who died of COVID-19 behind bars.

June 4, 2020

Public Health Emergency Credits bill (S2519/A4235) is introduced in the New Jersey Legislature.

October 19, 2020

Public Health Emergency Credits bill (S2519/A4235) is signed into law.

November 4, 2020

S2519/A4235 goes into effect, freeing more than 2,200 people and marking the single largest day of decarceration in New Jersey.

About 6,800 people released early from state prisons between November 4, 2020 and March 12, 2022

March 7, 2022

Public health emergency expires.

March 13, 2022

More than 1,500 additional people become eligible for release early from state prisons.

November 2022

In total, around 9,000 people have been released from prisons and jails in New Jersey as a result of Public Health Emergency Credits and legal advocacy that preceded the law.

That amounted to more than 5,000 years – or more than two million days – of returned freedom and opportunity. After PHEC, recidivism rates for released individuals were not significantly higher than the state average.¹⁷

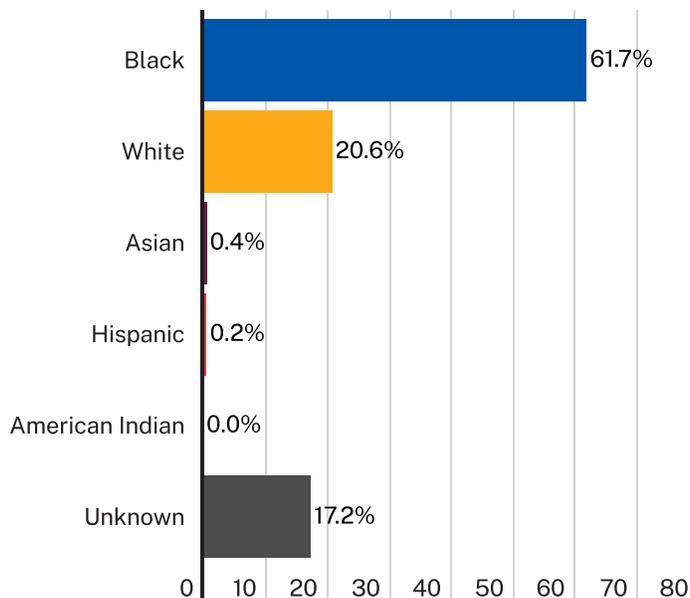
PHEC was passed for a specific reason – to address the public health crisis of a highly contagious pandemic. But the law has helped confront a much longer crisis: over-incarceration and the criminalization of people of color. It’s clear that PHEC can serve as a model for further decarceration, and at the largest scale.

At its heart, PHEC was not a policy about the pandemic. It was a policy about humanity. It recognized that no one, including incarcerated people and their families, deserves gratuitous suffering. That was true long before the first case of COVID-19 and will remain true well beyond the pandemic.

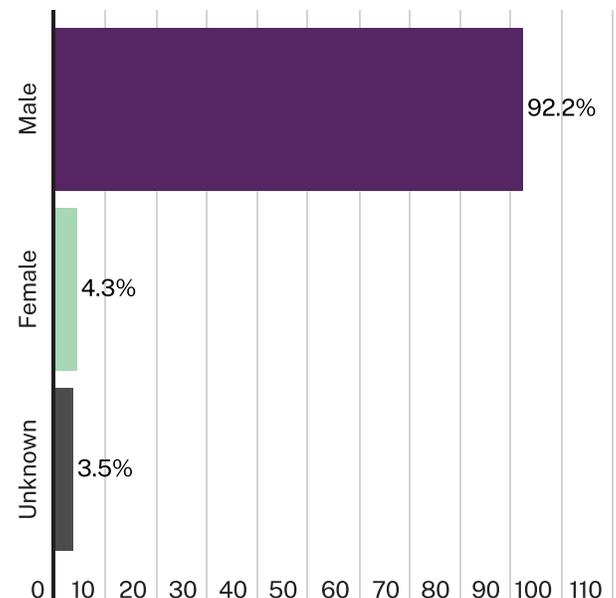
Incarcerated Population Released under PHEC

62% of people released under PHEC were Black and 92% were male

By Race



By Gender



Data obtained covers 5,356 of the ~9,000 people released under PHEC statewide.



James Matthew Daniel/ACLU

CANNABIS LEGALIZATION AND DECRIMINALIZATION

In 2015, as part of a larger effort to legalize marijuana in New Jersey by centering racial and social justice, the ACLU-NJ was a founding member of New Jersey United for Marijuana Reform (NJUMR) – a coalition of leaders whose wide-ranging expertise pushed the legalization movement forward. NJUMR’s years of dedicated work laid the foundation for the formation of NJ CAN 2020 by the ACLU-NJ and our partners, bringing together experts in public safety, medicine, civil rights, faith leadership, the cannabis industry, law, labor, and politics to advocate for the legalization and regulation of cannabis for adult use. Racial equity, social justice, and inclusion were at the core of our campaign to legalize cannabis through a 2020 ballot question.

At the polls, [67 percent](#) of voters approved the legalization of cannabis in New Jersey – a higher share than any other state that had put a similar measure on the ballot.¹⁸ Those voters were largely motivated by [racial and social justice](#).¹⁹

After the election, legislators faced the task of putting legalization and decriminalization into law. We knew that it was critical to ensure racial and social justice were key pieces of any legislation, so we worked

with members of NJ CAN 2020 and NJUMR to push for a bill that centered the experiences of those who had been most impacted by marijuana prohibition.

On February 22, 2021, Governor Phil Murphy signed into law one of the nation’s most forward-looking bills to legalize and decriminalize marijuana. The plan included recommendations from the ACLU-NJ and our partners.

We anticipate that cannabis legalization will have a powerful long-term effect in reducing New Jersey’s prison population, particularly in addressing racial disparities in the criminal legal system. Before 2021, Black people in New Jersey were arrested at a rate [3.5 times higher](#) than white people for marijuana possession, despite similar usage rates.²⁰ A single arrest for a marijuana-related charge previously came with lifelong consequences that affected access to housing, employment, education, and more.

Importantly, legalizing cannabis reduces police interactions and limits gateways into the criminal legal system. It also begins to tackle the decades-long drug war policies that were put in place to target Black and brown communities.



Expanding Freedom and Centering Humanity



In this pivotal moment, New Jersey can expand on its proven decarcerative foundation by prioritizing racial and social justice in implementing the following recommendations.

CATEGORICAL CLEMENCY

Clemency is one of the most powerful tools available to reduce our incarcerated population. The process enables certain parties – including governors, the president, or administrative boards – to reduce an incarcerated person’s sentence through a commutation or pardon them entirely.

Clemency is an integral part of our nation’s history. From the very early days of the United States, the founders recognized that clemency fortifies our system of checks and balances by providing a way for executive authorities to rectify mistakes or injustices in the criminal legal system. As such, the U.S. Constitution explicitly grants the President the power to grant reprieves and pardons for federal offenses, except in cases of impeachment. Since our nation’s founding, state constitutions have also included ways for executives to provide clemency to constituents. Now, every state in the nation has specific procedures to provide clemency.

In New Jersey, people who have been sentenced for a crime can apply for

clemency. Under current law, the Governor makes the ultimate decision about who will be granted clemency.

Unfortunately, clemency is widely underutilized in New Jersey: from 1994 to January 2022, only [105 people](#) received clemency.²¹

Categorical clemency – the process that extends consideration for commutations and pardons to groups of people based on shared characteristics – can change this pattern, significantly reduce our incarcerated population, and begin to address past injustices of the criminal legal system. Importantly, this means that eligible people are considered, not that a pardon or commutation is automatic.

This approach has been used with enormous success.

For example, many Governors have granted clemency to people convicted of possessing or using marijuana. In 2019, in Illinois – the day before signing a law legalizing

cannabis use – Governor J. B. Pritzker [pardoned more than 11,000 people](#) with low-level marijuana convictions.²² In 2022, in Oregon, then-Governor Kate Brown [pardoned 45,000 people](#) convicted of simple possession of marijuana.²³ Governor Jay Inslee in Washington, Governor Jared Polis in Colorado, and others have pursued [similar clemency approaches](#) for people convicted of marijuana use.²⁴

Meanwhile, former Pennsylvania Governor Tom Wolf [commuted the sentences](#) of more than a dozen people who were convicted under the state’s felony murder law.²⁵ Felony murder occurs when a person is involved in a felony offense that leads to a death – even if the person did not directly cause the death or intend for it to occur. In Pennsylvania, felony murder carries a mandatory sentence of life without the possibility of parole regardless of the circumstances surrounding the case, making clemency a crucial tool to give people convicted of this offense a chance at freedom.

Governors have also considered and pursued clemency for survivors of human trafficking and gender-based violence, people convicted as adolescents, older people, and people targeted by discriminatory laws. For example, in 2020 in Texas, Governor Greg Abbott [created a special clemency application](#) for survivors of domestic assault and human trafficking.²⁶

Importantly, while our nation is starkly

divided on many major issues, clemency is popular across the board. According to a [2022 ACLU report](#), more than two-thirds of voters – including a majority of Democrats, Independents, and Republicans – support clemency.²⁷

In sum, categorical clemency is a commonsense way to reduce our incarcerated population and reduce racial disparities in our prisons.

MANDATORY MINIMUMS

Mandatory minimums have driven mass incarceration in New Jersey and around the country by requiring judges to sentence people convicted of certain crimes to a minimum number of years in prison, regardless of the circumstances surrounding the case. For decades, these laws have fueled longer prison sentences and exacerbated racial disparities.

In 2023, [72 percent](#) of incarcerated people in New Jersey – accounting for more than 9,500 people – were sentenced under mandatory minimums, and many are serving very long sentences.²⁸ From 2017 to 2022, the share of New Jersey’s incarcerated population with mandatory minimum sentences of 20 years or more increased from about 19 percent to 27 percent.

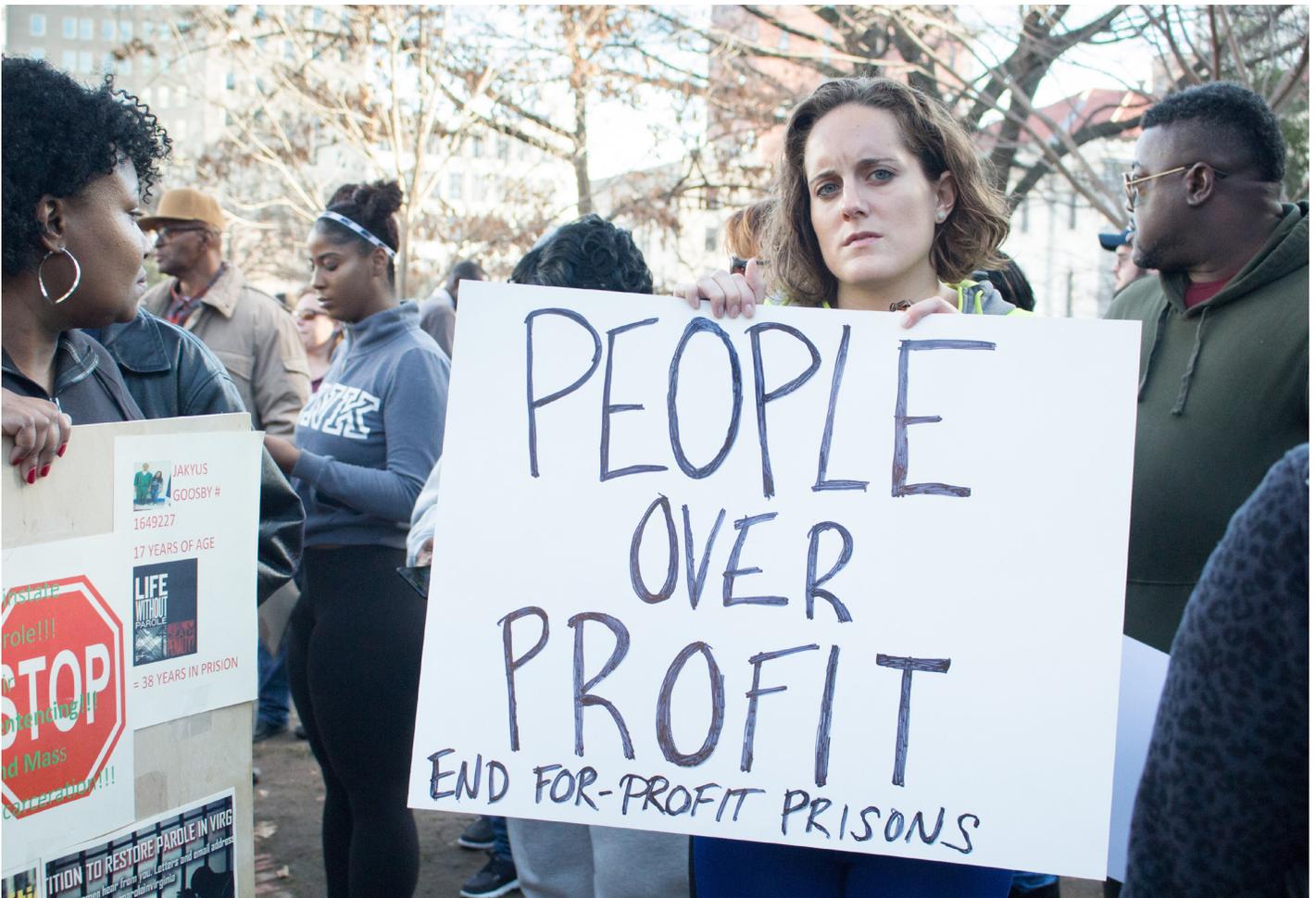
Recently, New Jersey policymakers considered reforming mandatory minimum laws. In 2021, legislators passed a bill that would have ended mandatory minimums for some nonviolent offenses. But Governor Phil Murphy vetoed the bill until certain changes were made.

Unfortunately, the legislation never made it into law.

While Attorney General Gurbir Grewal did [issue a directive](#) requiring prosecutors to waive mandatory minimum prison terms for non-violent drug offenses, New Jersey needs more permanent, all-encompassing change.²⁹

Importantly, the New Jersey Criminal Sentencing and Disposition Commission – an esteemed group of experts with an array of experience with our criminal legal system – has [consistently](#) and unanimously recommended reducing the use of mandatory minimums.³⁰

Mandatory minimums have proven unnecessary and harmful. It’s past time they were abolished.



James Matthew Daniel/ACLU

COMPASSIONATE RELEASE

Compassionate release is a process by which incarcerated people can be released due to extraordinary or compelling circumstances that were unknown or unforeseen during the time of sentencing. For example, the incarcerated person may have a terminal disease or a spouse who became incapacitated. Each state has different requirements for people to access compassionate release.

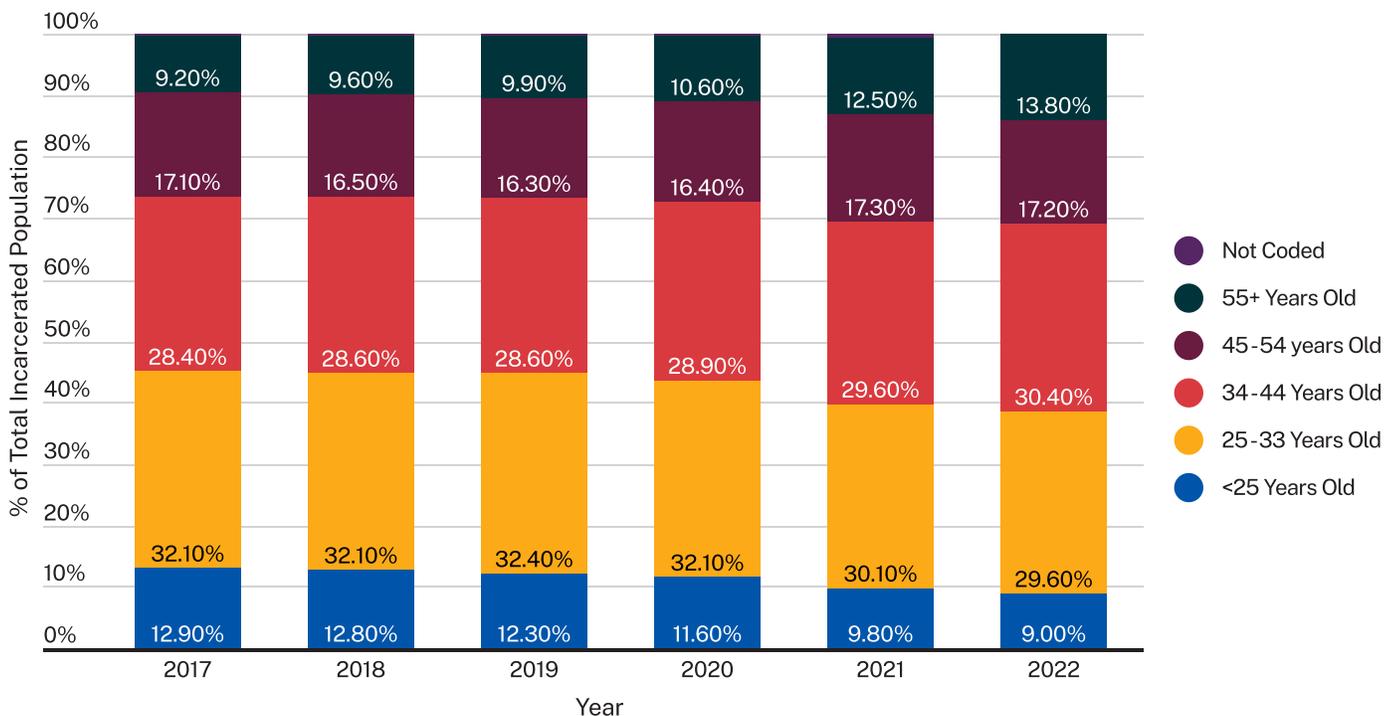
New Jersey has an incredibly high bar for people to receive compassionate release. To be eligible, the person must have a

prognosis of six months or less to live or a permanent physical incapacity. Even then, being released is exceptionally rare.

Such high standards unnecessarily keep people incarcerated. Research shows that older people and people with serious medical conditions – even those convicted of violent crimes – are [unlikely to reoffend](#).³¹ It is also an inefficient use of taxpayer funds to provide medical care to elderly people in prison – and New Jersey’s prison population is older on average than ever before. By expanding opportunities for compassionate release, New Jersey can further reduce its prison population.

Incarcerated Population by Age

Starting in 2021, the share of the incarcerated population below 25 years old decreased while the share above 55 years old increased



DRUG DECRIMINALIZATION

With roots in racism that go back centuries, the drug war has imposed a suffocating, militaristic police presence on Black and brown communities and fueled mass incarceration at an immeasurable human cost. Communities of color have been ripped apart. The incarcerated population has exploded.

As for the purported goal of ending drug use, these policies actually made it harder for people to seek help from health professionals. After all, a person convicted of drug use could face eviction from their home, separation from their family, loss of federal financial aid, disqualification from a range of occupational licenses, denial of public assistance, and immigration detention or deportation.

New Jersey has long experienced the effects of the drug war. In 2019, more than [one in five arrests](#) made by police departments was drug-related.³² Before 2021, when cannabis was officially legalized, more than 35,000 marijuana-related arrests took place each year – and Black people in New Jersey were arrested at a rate [3.5 times higher](#) than white people for marijuana possession, despite similar usage rates.³³

To begin to address the immeasurable harms of the drug war, it is crucial to eliminate criminal and civil penalties for drug use and possession. Drug use should be treated as a public health issue, not a crime.

Fortunately, by legalizing cannabis, New Jersey took a step toward doing just that – but it must go further.

For New Jerseyans who are living with substance-use disorders, treatment must be through a lens of public health, harm reduction, and access to opportunity. Arrests don't keep people safe, healthy, or alive – just punished.

To begin dismantling these long-term barriers, New Jersey must make harm reduction and voluntary treatment accessible for all who need it. And importantly, Black and brown communities that have experienced disinvestment for decades due to drug criminalization – in areas such as education, housing, employment, and other community needs – must be invested in to ensure that all New Jerseyans have equitable access to opportunity.



A Transformative Vision of Justice



From 2017 to 2022, New Jersey made significant progress toward reducing its incarcerated population – and served as a national leader in addressing our mass incarceration crisis.

These improvements were no small feat. They were a product of years of dedicated work and coordination from the ACLU-NJ and partners across the state. Every single change required widespread mobilization of allies, support from policymakers, and public education about the perils of mass incarceration. It also required addressing constant misinformation from pro-incarceration lobbyists.

The larger decarcerative movement that we are still fighting for today is powered by the people who have been impacted most by mass incarceration and the failures of the criminal legal system. The reverberations of every victory and every setback are felt in homes across the state – taking space at nearly every kitchen table – disproportionately affecting Black and brown communities. New Jersey has an obligation to disrupt this status quo that has plagued our towns and cities for decades.

Despite marked progress, our incarcerated population remains far too high, and our criminal legal system continues to disproportionately target and harm communities of color.

To move toward true racial and social justice, New Jersey can't settle for small changes. We need major transformation.

That includes looking beyond our criminal legal system and investing in the communities that have been most harmed by mass incarceration. By reinvesting in these communities and providing resources for education, food security, affordable housing, health care, and more, we can build safer and more resilient communities.

It's critical to keep building on the momentum of the past few years to tackle deep racial disparities and reduce New Jersey's incarcerated population. With the right reforms, we can continue to build healthier and stronger communities and reimagine the criminal legal system as we know it.

END NOTES

¹ This figure is based on government data of 2011 Total Inmates in New Jersey State Correctional Institutions and Satellites and 2022 Total Inmates in New Jersey State Correctional Institutions and Satellites.

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²⁶ Retrieved May 18, 2023 from https://www.urban.org/sites/default/files/publication/102696/how-governors-can-use-categorical-clemency-as-a-corrective-tool_0_1.pdf

²⁷ Retrieved May 18, 2023 from <https://www.aclu.org/press-releases/aclu-report-finds-significant-strides-in-clemency-trends-in-2022>

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³⁰ Retrieved May 18, 2023 from <https://pub.njleg.gov/publications/reports/CSDC%20Third%20Report.pdf>

³¹ Retrieved May 18, 2023 from <https://www.sentencingproject.org/reports/a-new-lease-on-life/?gad=1> and <https://famm.org/wp-content/uploads/Compassionate-Release-Factsheet.pdf>

³² Retrieved May 19, 2023 from <https://www.njpp.org/publications/report/a-war-on-us-how-much-new-jersey-spends-enforcing-the-war-on-drugs/>

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METHODOLOGY

Some data comes from publicly reported annual reports and the Judiciary’s criminal justice reform statistics. Other data comes from requests filed pursuant to the Open Public Records Act. Those requests are on file with the American Civil Liberties Union of New Jersey. For more information, visit [aclu-nj.org/decarceration](https://www.aclu-nj.org/decarceration).

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