

“Social justice should be the underlying goal of all humanity.”

-Alan V. Lowenstein, Institute Founder



TESTIMONY OF EMILY SCHWARTZ
NEW JERSEY INSTITUTE FOR SOCIAL JUSTICE
IN OPPOSITION TO S3777/A5189
NEW JERSEY SENATE BUDGET AND APPROPRIATIONS COMMITTEE
JUNE 12, 2023

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do social justice.

Thank you for the opportunity to present this testimony. The New Jersey Institute for Social Justice (the “Institute”) strongly opposes the A5189/S3777¹ as this legislation rolls back the progress made with the bipartisan success of the Criminal Justice Reform Act (“CJRA”).

My name is Emily Schwartz and I am senior counsel with the Criminal Justice Reform Program at the Institute. The Institute’s advocacy empowers people of color by building reparative systems that create wealth, transform justice and harness democratic power – from the ground up – in New Jersey. I am also a former public defender in both New Jersey and New York City, and have handled all degrees of offenses, representing individuals in the adult and juvenile court systems.

Introduction

New Jerseyans are understandably concerned about crime and public safety. But drafting law by inflaming fears is not a successful nor public safety-based strategy. Rolling back the CJRA to increase detention for auto crimes will not make us safer and will only further bolster a racist system of mass incarceration, the brunt of which is felt by Black communities. Let us be clear about the intent here – this bill seeks to incarcerate people before they have been found guilty of a crime.

We oppose A5189 for the following reasons.

First, the Supreme Court’s Criminal Justice Reform Act committee released a report reviewing the CJRA and provided recommendations for improvements. The legislature should review this report before any legislation moves forward affecting the CJRA. *Second*, by failing to address the root causes of crime, A5189 is only successful at putting more people behind bars, rather than decreasing crime rates. *Third*, by attempting to shift the presumption in favor of release to instead favor detention, A5189

undermines the success of the CJRA and opens the door to continued attack on this landmark, bipartisan, successful legislation. *Fourth*, law enforcement is successfully addressing car thefts in New Jersey and car theft is decreasing. *Fifth*, A5189/S3777 is not necessary because the current law already addresses individuals with prior convictions and open cases. *Sixth*, A5189/S3777 lacks the requisite fiscal estimate necessary for this committee to meaningfully evaluate the financial impact this bill would impose. Legislators should not rush this nor any legislation that directly affects pretrial detention—which has the potential to exacerbate the horrific racial disparities already present in our criminal legal system.

(1) The Supreme Court’s Criminal Justice Reform Act committee released a report reviewing the CJRA and provided recommendations for improvements. The legislature should review this report before any legislation moves forward affecting the CJRA.

In February 2023, the New Jersey Supreme Court formed a committee of stakeholders to review the CJRA. Law enforcement, legislators, prosecutors, attorneys and judges have been meeting over the last few months to review all aspects of the CJRA to create a comprehensive report.² In this report are recommendations³ that should inform any legislative effort to amend the CJRA. These recommendations are the result of robust research and expertise. As such, we urge that this bill not move forward until all legislators review this upcoming report.

(2) By failing to address the root causes of crime, A5189 is only successful at putting more people behind bars, rather than decreasing crime rates.

A5189 does not address the root causes of crime.

Unfortunately, this bill will increase detention in New Jersey, the state with the worst racial disparities in Black/white incarceration in the United States. A Black adult is 12 times more likely to be incarcerated than a white adult.⁴ Also, a Black youth is 18 times more likely to be incarcerated than a white youth⁵ even though both Black and white youth commit most offenses at similar rates.⁶ Increasing detention may exacerbate these incredibly harmful racial disparities.

Our state must instead increase sustained investment in community-based programs for youth and adults. These programs include prevention and diversion programs.

(3) By attempting to shift the presumption in favor of release to instead favor detention, A5189 undermines the success of the CJRA and opens the door to continued attack on this landmark, bipartisan, successful legislation.

The CJRA is successful legislation. Since 2017, it has successfully eliminated a system where people were detained not based on risk but based on the amount of money they had. The CJRA ensured that defendants returned to court at a rate as high as 97.1% in 2020.⁷ Moreover, the vast majority of defendants that are released are not rearrested and only 1.2% of released defendants were rearrested for the most serious offenses (Graves or NERA offenses).⁸ Furthermore, crime across

New Jersey had been falling prior to the CJRA,⁹ during the CJRA,¹⁰ and after a momentary increase across the nation during COVID, it is once again decreasing.¹¹ Nevertheless, the CJRA is repeatedly set as a scapegoat for false narratives about crime. Even our Attorney General agrees: “Pick your favorite bogeyman” citing bail reform and other recent progressive developments, “[n]one of these issues have caused significant increases in crime here in New Jersey, yet they are frequently invoked by those peddling the ‘crime epidemic’ narrative – often creating a false choice between community-police trust on one hand and public safety on the other.”¹²

By permitting legislation that alters the presumption in favor of release to move forward, the success of the CJRA will be stalled. It also opens the door to more exceptions, eroding all success and sets us back to an era we worked hard to reform.

Our criminal legal system presumes all to be innocent until proven guilty. It is why the CJRA is written in this way. It exists to meaningfully balance the rights of the accused with the concerns of the legal system. And the CJRA does that.

(4) Law enforcement is successfully addressing car thefts in New Jersey and car theft is decreasing.

“The public is being fed a steady diet of misinformation about the state of public safety here in New Jersey. Politicians all too often capitalize on tragic anecdotes to score political points.”¹³ This is directly from our Attorney General, Matthew J. Platkin. Crime is down, and car thefts are being addressed. In the past six months, he notes, “auto thefts have been driven down below their five-year average. In February of this year, auto thefts declined by 27% when compared to the same month last year, bring our year-to-date decline to a 25% reduction compared to this time last year.”¹⁴

This sentiment has been repeatedly echoed by our police. In his December 5, 2022 and December 19, 2022 testimony before both the Assembly and Senate’s Law and Public Safety Committees, New Jersey State Police’s Major Larry Williams indicated that law enforcement is successfully tackling car theft, which is declining.¹⁵ Major Williams noted that with the creation of a task force for auto theft and police departments working together, “[law enforcement is] reducing the amount of auto-thefts.”¹⁶ Major Williams attributed the lessening of the crime rate here to “law enforcement working together.”¹⁷ According to the Major, since August 2022, car theft rates have been in decline.¹⁸ We do not need knee-jerk and reactionary legislation to address a declining trend.

Car thefts are concerning. But the success of our law enforcement here, collaborating with each other and creating task forces, is working. And without legislation to put more people and more youth in jail for longer mandatory periods of time, we are seeing answers to public concerns.

(5) A5189/S3777 is not necessary because the current law already addresses individuals with prior convictions and open cases.

At a detention hearing both the prosecution and defense have an opportunity to present arguments and submit evidence, while making records to address all relevant factors clearly outlined in the criminal code.¹⁹ The hearing judge has access to the Public Safety Assessment,²⁰ a document that outlines an individual's criminal history, including convictions and open pending cases, and calculates the probabilities of rearrest and return to court on a case-by-case basis. Where an individual has an open matter or prior convictions, the PSA score is affected, making it more likely that the PSA will either recommend a higher level of monitoring or even a recommendation of no release.²¹ Judges already use this tool to assess concerns raised by the drafters here.

(6) A5189/S3777 lacks the requisite fiscal estimate necessary for this committee to meaningfully evaluate the financial impact this bill would impose.

Merely indicating there is to be an expected cost to legislation but that the cost is “indeterminate” does not satisfy the legislative obligations of this committee.²² At a minimum, this committee should have a fiscal estimate that outlines the current costs of prosecuting car thefts, the volume of those particular cases within the system, and the percentage of those cases where pretrial detention is imposed. In the fiscal estimate for these bills, OLS only noted the daily rate to incarcerate an individual pretrial, noting the variance of \$100/day to \$104/day.²³

A fiscal estimate should also include in greater detail the practical ability of our court system to handle this legislation. Our system is strained. We have a judge shortage and backlogs.²⁴ Given the likelihood that this legislation will cause an increase in detention filings, as noted already in the fiscal estimate, these bills will create an even greater strain on our system. Since the beginning of the COVID-19 pandemic, the ability to have speedy trials has been greatly diminished. Overall, the percentage of backlog for indictable offenses has increased by 8% between July 2022 and April 2023.²⁵ Post-indictment backlogs, overall, across the state, have increased by 4.4% between April 2022 to April 2023.²⁶ These delays are likely to keep more people incarcerated for an even longer period of pretrial time and therefore costs will continue to rise. In 2021, 85% of the jail population were individuals, presumed innocent, awaiting trial or disposition.²⁷ Taken together, all these unaddressed costs have the potential to be enormous. Unfortunately, the legislative record fails to capture these costs with any specificity. Simply relying on assertions that costs will shift indeterminate amounts, without any understanding of the full scope of the financial burdens currently, is not fiscally responsible and it is dangerous.

Conclusion

We sympathize with people who have had their sense of safety violated after having their vehicles stolen. However, as we explore solutions, we cannot go back to an era of failed policies that only serve to lock people up under the guise of public safety. Before making any changes, the Institute implores this committee and the entire legislature to review the Supreme Court Committee's report, review the data and speak with experts. Any legislation to amend the CJRA without this

foundation may result in unnecessary detention. The Institute strongly urges this committee to either pull A5189 or to vote against releasing it.

¹ Asm. B. No. 5189, 220th Leg. (N.J. 2023), https://pub.njleg.state.nj.us/Bills/2022/A9999/5189_I1.PDF; Sen. B. No 3777, 220th Leg (N.J. 2023), https://pub.njleg.state.nj.us/Bills/2022/S4000/3777_I1.PDF.

² N.J. Sup. Ct., Report of the Reconvened Joint Committee on Criminal Justice (Jun. 8, 2023), <https://www.njcourts.gov/sites/default/files/courts/criminal/criminal-justice-reform/reconvenedcommreport.pdf>.

³ *Id.*

⁴ ASHLEY NELLIS, THE COLOR OF JUSTICE: RACIAL AND ETHNIC DISPARITY IN STATE PRISONS, THE SENT’G PROJECT 10 (Oct. 13, 2021) <https://www.sentencingproject.org/app/uploads/2022/08/The-Color-of-Justice-Racial-and-Ethnic-Disparity-in-State-Prisons.pdf>.

⁵ JOSHUA ROVNER, BLACK DISPARITIES IN YOUTH INCARCERATION, THE SENT’G PROJECT (Jul. 15, 2021), <https://www.sentencingproject.org/publications/black-disparities-youth-incarceration/>.

⁶ JOSHUA ROVNER, THE SENT’G PROJECT, RACIAL DISPARITIES IN YOUTH COMMITMENTS AND ARRESTS 6 (2016), <https://www.sentencingproject.org/wp-content/uploads/2016/04/Racial-Disparities-in-Youth-Commitments-and-Arrests.pdf>; *see also* Nat’l Juv. Just. Network, Implicit Bias: Why It Matters for Youth Justice 1 (2017), <https://www.njjn.org/uploads/digital-library/NJJN%20Implicit%20Bias%20Snapshot%202017.pdf?phpMyAdmin=14730ab3483c51c94ca868bccffa06ef> (“Even though white youth and youth of color engage in illegal behavior at similar rates, substantial over-representation of youth of color in the juvenile justice systems across our country and disparities in treatment remains a serious problem.”).

⁷ N.J. Sup. Ct. *supra* note 2, at 15.

⁸ *Id.* at 15.

⁹ NJ.gov Crime Data, Official Site of the State of New Jersey, <https://www.nj.gov/nj/safety/features/crimedata.html>

¹⁰ *Id.*

¹¹ Michael Symons, *How Bad are Car Thefts in New Jersey? The Real Numbers for 2022*, NEW JERSEY 101.5 (Dec. 6, 2022), <https://nj1015.com/car-thefts-new-jersey-2022/>; Homicides and Shootings Decline in New Jersey’s Capital City (Aug. 31, 2022), <https://www.trentonnj.org/CivicAlerts.aspx?AID=762>; Coming Off Two Record Years, Homicides and Shootings Decline in New Jersey’s Capital City, MIDJERSEY.NEWS (Aug. 31, 2022), <https://midjersey.news/2022/08/31/coming-off-two-record-years-homicides-and-shootings-decline-in-new-jerseys-capital-city/>.

¹² Matthew J. Platkin, AG: Facts don’t lie. Crime is Down In New Jersey, NJ.COM, (Mar. 12, 2023), <https://www.nj.com/opinion/2023/03/ag-facts-dont-lie-crime-is-down-in-new-jersey-opinion.html>.

¹³ Matthew J. Platkin, AG: Facts don’t lie. Crime is Down In New Jersey, NJ.COM, (Mar. 12, 2023), <https://www.nj.com/opinion/2023/03/ag-facts-dont-lie-crime-is-down-in-new-jersey-opinion.html>.

¹⁴ *Id.*

¹⁵ New Jersey Legislature, Senate Judiciary Committee (Dec. 19, 2022), <https://www.njleg.state.nj.us/archivedmedia/2022/SJU-meeting-list/media-player?committee=SJU&agendaDate=2022-12-19-10:00:00&agendaType=M&av=A>; New Jersey Legislature, Assembly Law and Public Safety Committee Hearing (Dec. 5, 2022), <https://www.njleg.state.nj.us/archived-media/2022/ALP-meeting-list/mediaplayer?committee=ALP&agendaDate=2022-12-05-14:00:00&agendaType=M&av=V>;

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*; S.P. Sullivan and Brent Johnson, *With more than 14,3000 vehicles stolen in N.J. so far this year, officials push for tougher penalties*, NJ.COM (Dec. 11, 2022), <https://www.nj.com/politics/2022/12/with-more-than-14300-vehiclesstolen-in-nj-so-far-this-year-officials-push-for-tougher-penalties.html>

¹⁹ N.J. Stat. Ann §§ 2A:162-17-20 (West, 2023)

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- ²⁰ New Jersey Courts, Public Safety Assessment, New Jersey Risk Factor Definitions (Dec. 2018) <https://www.njcourts.gov/sites/default/files/psariskfactor.pdf> ; N.J. CTS., PRETRIAL RELEASE RECOMMENDATION DECISION MAKING FRAMEWORK (DMF) (Aug. 2022), <https://www.njcourts.gov/sites/default/files/decmakframework.pdf>.
- ²¹ N.J. Cts. *supra* note 20.
- ²² N.J. LEG., LEGISLATIVE FISCAL ESTIMATE ASSEMBLY, NO. 5189 STATE OF NEW JERSEY 220TH LEGISLATURE 1 (Mar. 27, 2023), https://pub.njleg.state.nj.us/Bills/2022/A5500/5189_E1.PDF.
- ²³ *Id.* at 2.
- ²⁴ Mike Deak, *Are NJ residents being 'denied justice' because of judge shortage?*, MYCENTRALJERSEY.COM (June. 7, 2023), <https://www.mycentraljersey.com/story/news/local/courts/2023/06/07/nj-judge-shortage-somerset-hunterdon-warren-vicinity-13/70293227007/>.
- ²⁵ N. J. CTS., MUNICIPAL COURT STATISTICS JULY 2022 – APRIL 2023 2 (2023), <https://www.njcourts.gov/sites/default/files/public/statistics/munc2304.pdf>.
- ²⁶ New Jersey Trial Courts Backlog: Current (Apr. 2023) <https://www.njcourts.gov/public/pub-rep-stats/trial-courts-backlog>.
- ²⁷ ANNUAL REPORT TO THE GOVERNOR AND THE LEGISLATURE 27 (Nov. 2022), <https://www.njcourts.gov/sites/default/files/courts/criminal/criminal-justice-reform/cjr2021.pdf>.