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VOLUME 19

SPRING 2022

ISSUE 2

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Form: Citations conform to *The Bluebook: A Uniform System of Citation* (21st ed. 2021). Please cite the *Rutgers Journal of Law & Public Policy* as 19 RUTGERS J.L. & PUB. POL'Y __ (2021).

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JOURNAL OF LAW & PUBLIC POLICY

VOLUME 19

FALL 2021

ISSUE 1

Current Issues
in Public Policy

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ISSN 1934-3736





ESTIMATING THE SAVINGS FROM
DECRIMINALIZING DRUG CONSUMPTION:
THE CASE OF NEW JERSEY

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ABSTRACT

Decriminalizing drugs means ending the Drug War against users, and permits reallocating its resources to public health and community restoration. While Oregon recently passed decriminalization, New Jersey has taken a piecemeal approach for twenty-five years. This study assesses that history, the shape of the prison-industrial complex born of the Drug War, and the prospective savings as decriminalization permits the state to downsize the police, the courts, public defenders and prosecutors, the carceral system (jails, prisons, parole, probation), and to avoid some health crisis-intervention. The study finds that of the more than 1 billion dollars in anticipated savings, over half is from police, one-fifth is from incarceration, and one-fifth is from health casualties averted.

I. INTRODUCTION

Nearly half the US population has a family member or friend who is or has been addicted to drugs.¹ The Drug War, purported to help end addiction but initiated to impose a particular racial and political agenda, has been waged through expanding the footprint and costs of police and other law enforcement agencies, corrections, probation, and

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¹ John Gramlich, *Nearly Half of Americans Have a Family Member or Close Friend Who's Been Addicted to Drugs*, PEW RSCH. CTR. (Oct. 26, 2017), <https://www.pewresearch.org/fact-tank/2017/10/26/nearly-half-of-americans-have-a-family-member-or-close-friend-whos-been-addicted-to-drugs> [<https://web.archive.org/web/20220330093416/https://www.pewresearch.org/fact-tank/2017/10/26/nearly-half-of-americans-have-a-family-member-or-close-friend-whos-been-addicted-to-drugs/>].

the courts.² It has not led to a reduction in the use of drugs, and arguably incarceration has even led to increased deaths from overdose once prisoners are released.³ Activists nationally and in New Jersey are calling for an end to the Drug War, replacing punishment and vindictiveness with a public-health approach.⁴ This acknowledges that not every drug user is addicted, and that those who are need mental- and physical-health support, not prison.

This paper provides an overview of the Drug War in New Jersey, and the state's decades-long effort to deescalate the war, which has had only limited success. It then shows how to estimate the potential cost savings from demobilizing the Drug War by decriminalizing drug-consumption violations, leaving the supply prohibition intact, providing

² The ACLU director, Graham Boyd, made the case for incarceration, the correlate expenses for police, judiciary and probation are logical extensions. See generally Graham Boyd, *The Drug War is the New Jim Crow*, NACLA REPORT ON THE AMERICAS, July-Aug. 2001, <https://www.aclu.org/other/drug-war-new-jim-crow>.

³ See, e.g., Betsy Pearl, *Ending the War on Drugs: By the Numbers*, CTR. FOR AM. PROGRESS (June 27, 2018), <https://www.americanprogress.org/article/ending-war-drugs-numbers/> [<https://web.archive.org/web/20220417013008/https://www.americanprogress.org/article/ending-war-drugs-numbers/>].

⁴ Jimmy Carter, *Call off the Global Drug War*, NY TIMES (June 16, 2011) <https://www.nytimes.com/2011/06/17/opinion/17carter.html>; *On 50th Anniversary of "War on Drugs," Poll Shows Majority of Voters Support Ending Criminal Penalties for Drug Possession, Think Drug War is a Failure*, AM. CIV. LIBERTIES UNION (June 9, 2021) <https://www.aclu.org/press-releases/50th-anniversary-war-drugs-poll-shows-majority-voters-support-ending-criminal>; *Take Action.*, DRUG POLICY ALL., <https://drugpolicy.org/action> (last visited May 2, 2022); Louis DiPaolo, *Abolish the Drug War*, N.J. POL'Y PERSP., (Feb. 5, 2021) <https://www.njpp.org/publications/friday-facts-and-figures/friday-facts-and-figures-february-5-2021/>.

a template for other states to follow.⁵ In principle these savings can be reallocated to treatment and reparations to the communities damaged by the war, in particular Black communities. Ending the Drug War nationwide would dissipate the fuel that ignites racist police practices, from pretext stops to deaths at the hands of police.⁶

It is well-known that President Nixon explicitly advocated an aggressive police response to drug use in order to simultaneously punish

⁵ This is the first such public template focused on drug use. Estimates of cost savings from legalization, including supply as well as demand, are provided for New Jersey in JENNA MELLOR, N.J. POL’Y PERSP, A WAR ON US: HOW MUCH NEW JERSEY SPENDS ENFORCING THE WAR ON DRUGS 18 (2021), <https://www.njpp.org/wp-content/uploads/2021/06/NJPP-Report-A-War-on-U-S-How-Much-New-Jersey-Spends-Enforcing-the-War-on-Drugs.pdf>. Estimates can also be found for other states. See also JEFFREY MIRON, CATO INST., THE BUDGETARY EFFECTS OF ENDING DRUG PROHIBITION 2 (2018), <https://www.cato.org/sites/cato.org/files/pubs/pdf/tbb-83.pdf>; see JEFFREY A. MIRON & KATHERINE WALDOCK, CATO INST., THE BUDGETARY IMPACT OF ENDING DRUG PROHIBITION (2018), <https://www.cato.org/sites/cato.org/files/pubs/pdf/DrugProhibitionWP.pdf>. Several unpublished studies have looked at savings from legalizing cannabis—for example, for California. See Jonathan P. Caulkins, *Cost of Marijuana Prohibition on the California Criminal Justice System* (RAND Drug Pol’y Rsch. Ctr. Working Paper No. WR-763-RC, 2010), https://www.rand.org/pubs/working_papers/WR763.html. Another unpublished study estimated the savings from decriminalizing consumption in Oregon. See Memorandum from Andrew Dyke, Sadie DiNatale & Joel Ainsworth to author, *Cost Savings in Oregon from Drug Decriminalization*, (Aug. 26, 2019) (on file with author); see also E-mail from Aliza Cohen, Drug Pol’y All., to author (July 28, 2021) (on file with author). There needs to be published, transparent methodologies for assessing decriminalization.

⁶ See, e.g., BRIANNA DA SILVA BHATIA ET AL., PHYSICIANS FOR HUM. RTS., “EXCITED DELIRIUM” AND DEATHS IN POLICE CUSTODY: THE DEADLY IMPACT OF A BASELESS DIAGNOSIS (2022), <https://phr.org/wp-content/uploads/2022/03/PHR-Excited-Delirium-Report-March-2022.pdf>; see generally Osagie K. Obasogie, *Excited Delirium and Police Use of Force*, 107 VA. L. REV. 1545, 1560-61 (2021).

and politically neutralize his perceived enemies: activists against the Vietnam War, and the Black Power movement.⁷ In practice, the “War on Drugs” has been severely punishing for Black and Latinx communities, much less so for whites, whose drug use is more readily hidden or passed over by police.⁸ While drug consumption varies little by race/ethnicity, “blacks are nearly four times as likely as whites to be arrested for drug offenses and 2.5 times as likely to be arrested for drug possession,”⁹ and Blacks are 12.2 times as likely to be incarcerated in NJ as whites.¹⁰ More than other states, New Jersey adopted a “draconian” reliance on mandatory and lengthy incarceration, especially possession within 1000 feet of a school,¹¹ which constituted wide sections of neighborhoods in densely-populated urban areas and contributed to this disparate racial and ethnic impact.¹²

For indictable offenses (e.g., possession of cocaine, heroin, LSD, ecstasy and their derivatives), those convicted in New Jersey lost their driver’s licenses through 2012, and to federal funds for education

⁷ CHRISTOPHER J. COYNE & ABIGAIL R. HALL, CATO INST., FOUR DECADES AND COUNTING: THE CONTINUED FAILURE OF THE WAR ON DRUGS 11-12 (2017), <https://www.cato.org/sites/cato.org/files/pubs/pdf/pa-811-updated.pdf> (quoting John Ehrlichman, Nixon advisor).

⁸ ELIZABETH HINTON ET AL., VERA INST. OF JUST., AN UNJUST BURDEN: THE DISPARATE TREATMENT OF BLACK AMERICANS IN THE CRIMINAL JUSTICE SYSTEM 5, 7 (2018) <https://www.vera.org/downloads/publications/for-the-record-unjust-burden-racial-disparities.pdf>.

⁹ ASHLEY NELLIS, SENT’G PROJECT, THE COLOR OF JUSTICE: RACIAL AND ETHNIC DISPARITY IN STATE PRISONS 10 (2016), <https://www.sentencingproject.org/publications/the-color-of-justice-2016-report>.

¹⁰ *Id.* at 17.

¹¹ Stephen Hunter et al., *New Jersey’s Drug Courts: A Fundamental Shift from the War on Drugs to a Public Health Approach for Drug Addiction and Drug-Related Crime*, 64 RUTGERS L. REV. 795, 796, 798 (2012).

¹² HINTON ET AL., *supra* note 8, at 3.

until 2021.¹³ This, coupled with the degrading experience of prison and being deprived of employment opportunities due to criminal records, created an underclass subjected to layered abridged rights, economically marginalizing men of color in particular.¹⁴ It also drove a wedge into families, separating household members from loved ones convicted of felonies if they were to qualify for government funds, such as public housing or housing subsidies.¹⁵

One function of widespread incarceration is to promote a reduction in expectations regarding adequate living conditions. Those in prison learn to live in authoritarian structures designed to suppress and silence their voices, to accept tiny wages and to survive in a living space often designed for one but occupied by two that includes bunk beds, a toilet, and a sink in a single cell.¹⁶ Prison Policy Initiative reports

¹³ Off. of Fed. Student Aid, *Early Implementation of the FAFSA Simplification Act's Removal of Selective Service and Drug Conviction Requirements for Title IV Eligibility*, U.S. DEPT. OF EDUC. (Jun. 11, 2021), <https://fsapartners.ed.gov/knowledge-center/library/dear-colleague-letters/2021-06-11/early-implementation-fafsa-simplification-acts-removal-selective-service-and-drug-conviction-requirements-title-iv-eligibility>.

¹⁴ HINTON ET AL., *supra* note 8, at 10.

¹⁵ *No Second Chance, People with Criminal Records Denied Access to Public Housing*, HUM. RTS. WATCH (Nov. 18, 2004), <https://www.hrw.org/report/2004/11/18/no-second-chance/people-criminal-records-denied-access-public-housing#>; Tracey Tully, *Landlords Barred from Using Criminal Records to Deny Housing*, N.Y. TIMES (Jun. 4, 2021), <https://www.nytimes.com/2021/06/04/nyregion/nj-housing-bill-ban-the-box-bill.html>.

¹⁶ Ed Grabianowski, *How Prisons Work- A Detailed Account*, INMATEAID (2022), <https://www.inmateaid.com/information/how-prisons-work-a-detailed-account>; Peter D'Auria, *Hudson's Jail was one of the most Dangerous in N.J. Take a Look Inside the \$10 million Renovations to make it Safer*, N.J.COM (Jul. 19, 2020), <https://www.nj.com/hudson/2020/07/hudsons-jail-was-one-of-the-most-dangerous-in-nj-take-a-look-inside-the-10-million-renovations-to-make-it-safer.html>.

that those in NJ prisons typically earned \$2.08-\$2.56/day.¹⁷ This translates to a \$.26-\$.32 hourly wage,¹⁸ far below the NJ minimum wage of \$13/hour in 2022.¹⁹ The logic is that the prison is providing “room and board,” so prison labor should help subsidize the person’s incarceration.²⁰ It means that it takes an incarcerated person three days’ work to earn the \$5 copay to access healthcare.²¹ The implicit lesson is

¹⁷ See Wendy Sawyer, *How Much do Incarcerated People Earn in Each State?*, PRISON POL’Y INITIATIVE: BLOG (Apr. 10, 2017), <https://www.prisonpolicy.org/blog/2017/04/10/wages/>; see generally *State and Federal Prison Wage Policies and Sourcing Information*, PRISON POL’Y INITIATIVE, https://www.prisonpolicy.org/reports/wage_policies.html [https://web.archive.org/web/20220414083352/https://www.prisonpolicy.org/reports/wage_policies.html] (last visited Mar. 31, 2022) (summarizing wage data in the East Jersey State Prison Handbook, the Auditor’s Report for the Department of Corrections, and a 2015 news story on Gov. Christie’s use of prison labor to repair his office furniture).

¹⁸ The underlying data are cited as from the NJ DOC standard 620 for inmate wages; the data are for 1988, corrected in 2001. Using the latter year, the \$1.30-\$1.60 reported, corrected for inflation, would be \$2.08-\$2.56 now. Emma Kolakowski reported N.J. prison maintenance workers currently earned at most \$2.00/hour, which is consistent with this range. Emma Kolakowski, *Prison Labor: America’s Secret Workforce*, CURRENT 12, 13 (Winter 2020), <https://thecurrentmsu.com/2021/01/24/prison-labor-americas-secret-workforce/>.

¹⁹ *New Jersey’s Minimum Wage Increases to \$13/Hour for Most Employees on January 1, 2022*, STATE OF N.J. (Jan. 1, 2022), <https://www.nj.gov/governor/news/news/562021/20220101a.shtml#:~:text=Governor%20Phil%20Murphy,-Twitter%20Facebook%20YouTube&text=TRENTON%20%E2%80%93%20New%20Jersey's%20statewide%20minimum,by%202024%20for%20most%20employees.>

²⁰ Press Release, Wendy Sawyer & Peter Wagner, Prison Policy Initiative, *Mass Incarceration: The Whole Pie 2020* (May 24, 2020), <https://www.prisonpolicy.org/reports/pie2020.html>.

²¹ *New Jersey Profile*, PRISON POL’Y INITIATIVE, <https://www.prisonpolicy.org/profiles/NJ.html> (last visited May 17, 2022).

that healthcare is a luxury, not a right, further ratcheting down formerly incarcerated people's expectations for what they are entitled to.

In the face of its racism and dysfunctional consequences, there have been numerous calls to dismantle the Drug War and prioritize healing over punishment over the last 20 years,²² Despite efforts in many states, including New Jersey as will be shown, to do precisely that, the Drug War prison-industrial complex has developed a life of its own, just like the military-industrial complex. The prison-industrial complex (police, prosecutors, courts, probation officers, jails and prisons)²³ has

²² See, e.g., Ellis Cose, *The Casualties of War*, NEWSWEEK, Sept. 6, 1999, at 29; DRUG POL'Y ALL., DRUG DECRIMINALIZATION IN PORTUGAL: LEARNING FROM A HEALTH AND HUMAN-CENTERED APPROACH 2 (2018); see generally Ira Glasser, *American Drug Laws: The New Jim Crow*, 63 ALB. L. REV. 703 (2000); TESS BORDEN, HUM. RTS. WATCH, EVERY 25 SECONDS: THE HUMAN TOLL OF CRIMINALIZING DRUG USE IN THE UNITED STATES 3 (2016); Hunter et al., *supra* note 8; see also Brian X. McCrone, *Marijuana Criminal Cases Dropped En Masse by Philadelphia District Attorney*, NBC 10 PHILA. (Mar. 19, 2018, 6:13 PM), <https://www.nbcphiladelphia.com/news/local/marijuana-criminal-cases-dropped-en-masse-by-philadelphia-district-attorney-larry-krasner/205152>; Joseph McNamara, Former Police Chief of San Jose, Author, Fellow, Hoover Inst., *The Drug War: Violent, Corrupt and Unsuccessful*, Address to the Commonwealth Club of San Francisco (Mar. 26, 1997), in 62 VITAL SPEECHES OF THE DAY 537, 538 (1997); DANIEL MEJÍA & JOANNE CSETE, OPEN SOC'Y FOUND., THE ECONOMICS OF THE DRUG WAR: UNACCOUNTED COSTS, LOST LIVES, MISSED OPPORTUNITIES 16 (2016).

²³As originally conceived, this referred more narrowly to those profiting directly from prisons. See Angela Y. Davis & Cassandra Shaylor, *Race, Gender and the Prison Industrial Complex, California and Beyond*, 2 MERIDIANS 1, 2 (2001). It has come to be understood, and is used here, to refer to the system of institutions encompassing every aspect of the prison pipeline and correctional control. See, e.g., Ashley Balcerzak, *What Could 'Defunding the Police' Look Like in New Jersey*, N.J. HERALD (July 1, 2020, 7:53 PM), <https://www.njherald.com/story/news/2020/07/01/what-could-defunding-police-look-like-in-new-jersey/113408564/> (quoting Angela Davis).

proven to be an entrenched set of actors and forces that find mutual economic benefit in maintaining and expanding their respective terrains, and in promoting sustaining ideologies, like the demonized Black drug addict.

For instance, the ratio of police to population rose 77% from 1971 to its peak years of 1998-2008 (see figure 1).²⁴ Yet the rate of violent and property crime peaked some twenty years earlier, in 1980, averaged 16% below peak until 1990, and was back to pre-Drug War levels by the early 2000s (see figure 2). It is now at the levels of the early 1960s, that is, 75% below peak.²⁵ *Prima facie*, this evidence suggests we are long past the point of diminishing returns to expenditures on police. Economists argue that the threat of arrest and incarceration may serve as deterrents, preventing crime,²⁶ but the appropriate level of deterrence has not been parameterized. There is much evidence that the Drug War has undermined social systems and helped destroy urban communities, exacerbating dysfunctional behavior, drug dependence, and criminalization in those areas, that is, generated negative returns.²⁷

²⁴ See N.J. STATE POLICE, UNIFORM CRIME REPORT (1971-2019), <https://nj.gov/njsp/ucr/uniform-crime-reports.shtml> for raw data contributing to figure 1.

²⁵ See *Rate of Violent Crime from 2010 to 2020*, FED. BUREAU OF INVESTIGATION: CRIME DATA EXPLORER (Sep. 27, 2021), <https://crime-data-explorer.app.cloud.gov/pages/explorer/crime/crime-trend> [<https://web.archive.org/web/20220419152925/https://crime-data-explorer.app.cloud.gov/pages/explorer/crime/crime-trend>] for raw data contributing to figure 2.

²⁶ Gary S. Becker, *Crime and Punishment: An Economic Approach*, 76 J. POL. ECON. 169, 176 (1968).

²⁷ For concern about a “tipping point,” see Dina R. Rose & Todd R. Clear, *Incarceration, Social Capital, and Crime: Implications for Social Disorganization Theory*, 36 CRIMINOLOGY 441, 457 (1998).

Figure 1

NJ Police Officers, and Police Incidence as a Proportion of Population

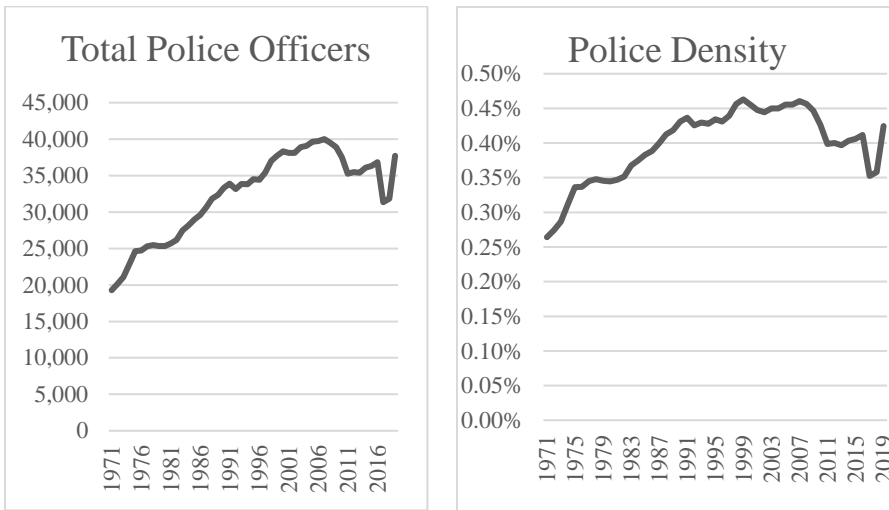
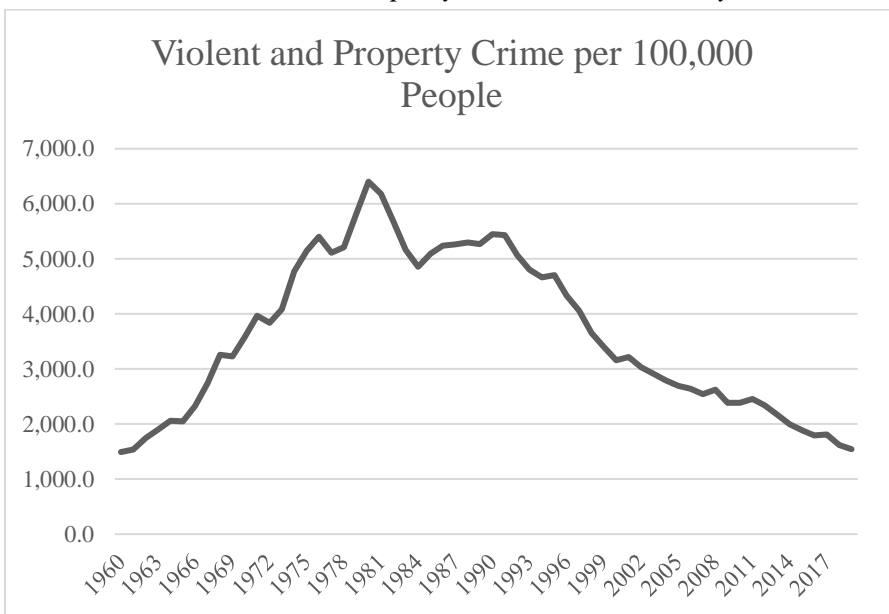


Figure 2

Violent and Property Crime in New Jersey



Over the past year, the Black Lives Matter movement has brought the call to “defund the police” to the forefront, in the aftermath of the brutal public murder of George Floyd by a Minneapolis police officer.²⁸ This paper will show that the state of New Jersey has sought to downsize the Drug War and associated expenditures for some time. First those efforts are reviewed, then the costs of continuing to criminalize drug use are analyzed.

II. NEW JERSEY’S EFFORTS TO DEESCALATE THE DRUG WAR

In 1997, Gov. Whitman’s administration created a drug-court pilot in three NJ counties, financing treatment by diverting funds from the Department of Corrections to the Department of Health.²⁹ The Drug Court Program helped identify and move those with substance-based addiction issues (alcohol or drugs) to treatment programs, intensive probation supervision (initially mandated for five years), random drug tests, and very frequent court appearances, in lieu of full incarceration.³⁰ Reports of cost savings and promising outcomes³¹ led to drug courts being initiated statewide, 2002-2005.³² Between April 2002 and June 2008, 6136 people participated in the program.³³ However, while corrections employment initially dropped 12% from 2002 to 2006, it

²⁸ Balcerzak, *supra* note 23.

²⁹ N.J. CTS., A MODEL FOR SUCCESS: A REPORT ON NEW JERSEY’S ADULT DRUG COURT 6 (2010). In this paper, prison refers to New Jersey state prisons and jail indicates county jails. Federal law and federal prisons are beyond New Jersey policy reach.

³⁰ *Id.* at 5.

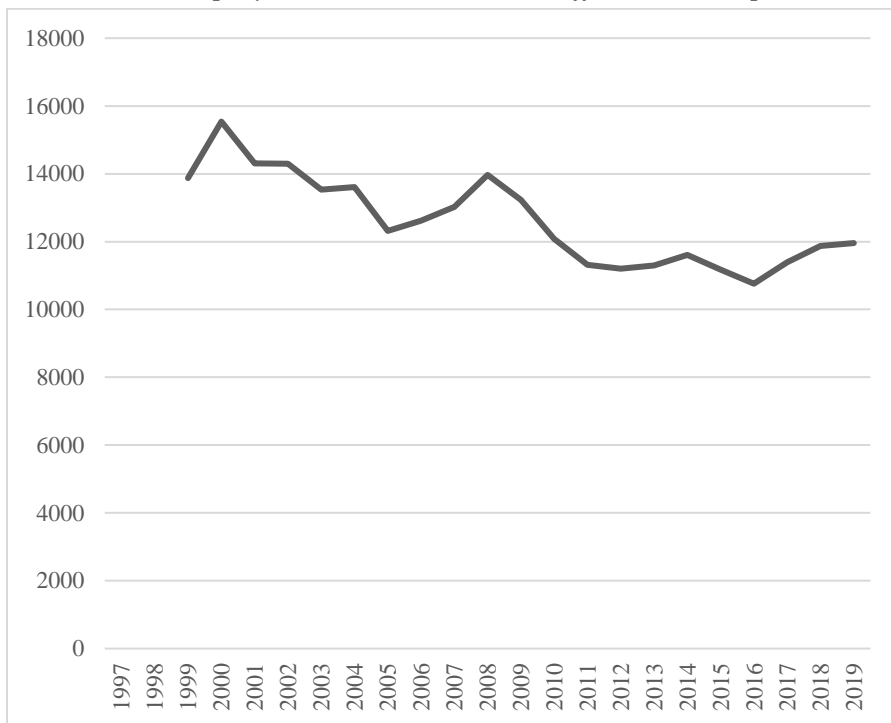
³¹ “The rate at which New Jersey Drug Court graduates are re-arrested for a new indictable offense is currently at 16 percent. The rate of reconviction is 8 percent and the rate of incarceration in a state prison is 4 percent. The rate of re-arrest for drug offenders released from prison was reported by the state’s Department of Corrections as 54 percent with a re-conviction rate of 43 percent.” *Id.* at 16.

³² *Id.* at 7-8.

³³ *Id.* at 14.

returned to 98% of 2002 levels by 2008, speaking to the political difficulty of downsizing incarceration costs (see figure 3).³⁴

Figure 3
Total NJ Employment, Prison and Jail Officers and Supervisors



Social activists and even some police chafed at the evident racism of the Drug War.³⁵ Two NJ state troopers eventually acknowledged their discriminatory practices in stopping and shooting several unarmed Black and Hispanic occupants of a van in 1998.³⁶ They

³⁴ See *Occupational Employment and Wage Statistics; May [Year]* *Occupational Employment and Wage Estimates, New Jersey*, U.S. BUREAU OF LAB. STAT., <https://www.bls.gov/oes/tables.htm> (last updated Apr. 4, 2022) [hereinafter *Occupational Employment Statistics*] for raw data contributing to figure 3.

³⁵ McNamara, *supra* note 22.

³⁶ David Kocienewski, *New Jersey Troopers Avoid Jail in Case that Highlighted Profiling*, N.Y. TIMES (Jan. 15, 2002),

reported they had only stopped the van because of the color of its occupants: such racial profiling was part of their training.³⁷ This confirmed activist complaints. There ensued hearings by the Black and Latino Legislative Caucus, official reports by the Attorney General on the state police, and the NJ Supreme Court intervened.³⁸ Within two years, NJ entered into a consent decree with the Clinton US Department of Justice requiring court oversight of the state police; it also mandated video recorders in police vehicles³⁹, a practice then emulated elsewhere. By 2003, the NJ Legislature had made racial profiling an indictable offense.⁴⁰ This shook the criminal system, requiring reevaluation of many previous cases as potentially based on discriminatory practices.⁴¹

Under Gov. Whitman, New Jersey's parole commissioner adopted changes to eliminate the large backlog of parole hearings (at the time, 5,800 incarcerated people were in limbo).⁴² This almost quadrupled the paroles granted between 1999 and 2001, helping to abate incarceration.⁴³

<https://www.nytimes.com/2002/01/15/nyregion/new-jersey-troopers-avoid-jail-in-case-that-highlighted-profiling.html>.

³⁷ *Id.*

³⁸ Delores Jones-Brown & Brian A. Maule, *Racially Biased Policing: A Review of the Judicial and Legislative Literature*, in RACE, ETHNICITY, AND POLICING: NEW AND ESSENTIAL READINGS 166, n. 43 (Stephen K Rice & Michael D. White eds., 2010); PETER VERNIERO & PAUL H. ZOUBEK, N.J. OFF. OF THE ATT'Y GEN., INTERIM REPORT OF THE STATE POLICE REVIEW TEAM REGARDING ALLEGATIONS OF RACIAL PROFILING (1999), https://www.state.nj.us/lps/intm_419.pdf; Bruce D. Stout & Bennett A. Barlyn, *The Human and Fiscal Toll of America's Drug War: One State's Experience*, 6 ALB. GOV'T L. REV. 522, 541-542 (2013) (citing N.J. STAT. ANN. § 2C:30-6 (West 2003)).

³⁹ Kyle C. Veatch, *The Effect of Collective Bargaining on the Use of Innovative Police Policy*, 7 OSPREY J. IDEAS & INQUIRY 14, 17 (2008).

⁴⁰ Stout & Barlyn, *supra* note 38.

⁴¹ *Id.* at 544.

⁴² NELLIS, *supra* note 9, at 12.

⁴³ *Id.*

Changing economic circumstances also enticed some to start rethinking mass incarceration. The long, slow expansion of the Clinton years had finally, after 1997, reduced quarterly Black unemployment rates to below 10% for the first time since the 1970s,⁴⁴ and that held for several years. This higher demand for Black labor perhaps threw doubt on the incarceration imperative.

At the same time, the national discourse started to allude to the Drug War as the “new Jim Crow.”⁴⁵ In 1999, *Newsweek* quoted Eric Sterling of the Criminal Justice Policy Foundation as suggesting that interpretation of mass incarceration.⁴⁶ Later that year, Ira Glasser, Executive Director of the ACLU, adopted the same phrase regarding US Drug Laws at the organization’s biennial conference, and in a speech to the Albany Law School.⁴⁷ Eleven years later, law professor Michelle Alexander’s scholarly bestseller by the same title brought the issue to national attention.⁴⁸

In 2008, when police density was still at historic highs, the financial crisis and Great Recession hit, up-ending state budget predictions and leading to ongoing budget crises.⁴⁹ New Jersey began looking for ways to cut spending, including expenditures associated with the Drug War. One such effort in 2009 was heavier reliance on the drug court program, whose enrollment jumped 25%.⁵⁰ Current active participant numbers grew from 1,221 in 2008 to 6,600 in January 2020,

⁴⁴ *Unemployment Rate – 20 Yrs. & Over, Black or African American Men*, FED. RSRV. ECON. DATA: ST. LOUIS, <https://fred.stlouisfed.org/series/LNU04000031> (last updated Apr. 1, 2022).

⁴⁵ MICHELLE ALEXANDER, *THE NEW JIM CROW: MASS INCARCERATION IN THE AGE OF COLORBLINDNESS* (2010).

⁴⁶ Cose, *supra* note 22, at 29.

⁴⁷ Glasser, *supra* note 22.

⁴⁸ ALEXANDER, *supra* note 45.

⁴⁹ Ashley Balcerzak, *Here’s How New Jersey’s Finances Fared in the 2010s After the Great Recession*, NORTHJERSEY.COM (Dec. 31, 2019), <https://www.northjersey.com/story/news/new-jersey/2019/12/31/heres-how-new-jersey-finances-fared-after-great-recession/4396750002>.

⁵⁰ N.J. CTS., *supra* note 29, at 14.

slipping to 5,540/5,194 by July 2021/January 2022 during the pandemic.⁵¹ In 2012 the program was changed from voluntary application to mandatory involvement,⁵² as some 1980s researchers suggested even involuntary participation was salutary.⁵³ In a critical review, John Anderson evaluated the quality of research performed on mandatory drug court effectivity, and found that, “Few studies have tracked long-term outcomes, particularly rates of recidivism and substance misuse once participants have exited the drug court treatment program.”⁵⁴ Nor do they compare mandatory with voluntary treatment outcomes.⁵⁵ Most published studies were neither peer-reviewed nor randomized.⁵⁶ New Jersey’s move to mandatory drug court participation drew criticism from mental-health advocates, a community

⁵¹ *Id.*; Sergio Bichao, *Second Chance or Soft on Crime? NJ Lawmakers Take on Drug Court During Pandemic*, N.J. 101.5 (Mar. 24, 2020), <https://nj1015.com/second-chance-or-soft-on-crime-nj-lawmakers-take-on-drug-court-during-pandemic/>; see also *New Jersey Drug Court Program: New Jersey Statistical Highlights*, N.J. CTS. (Oct. 6, 2020), (July 7, 2021), <https://www.njcourts.gov/courts/assets/criminal/njstats.pdf>; *New Jersey Adult Recovery Court Program: New Jersey Statistical Highlights*, N.J. CTS. (Jan. 10, 2022), <https://www.njcourts.gov/courts/assets/probation/njstats.pdf>. The program was renamed Adult Recovery Court Program beginning 2022.

⁵² *Recovery Courts: Drug Court Stories 2019*, N.J. CTS., <https://njcourts.gov/courts/criminal/drug.html?lang=eng> (last visited Apr. 14, 2022).

⁵³ ROGER H. PETERS & ELIZABETH PEYTON, GUIDELINE FOR DRUG COURTS ON SCREENING AND ASSESSMENT 14 (1998), <https://www.ojp.gov/pdffiles1/bja/171143.pdf>.

⁵⁴ John F. Anderson, *What to Do About “Much Ado” About Drug Courts?*, 12 INT’L J. DRUG POL’Y 469, 471 (2001).

⁵⁵ *Id.*

⁵⁶ *Id.* at 471-72.

that had long challenged the appearance of treatment over the client's right to control their own bodies.⁵⁷

One announced administrative purpose of drug courts was to save state and municipal funds by reducing jail populations.⁵⁸ In 2010 the annual institutional cost per prison inmate was \$38,900, while Drug Court expenses were \$11,379/participant, or 70% less.⁵⁹ However, as was true with police employment, corrections employment has dropped a mere 1% since 2010, again suggesting tremendous prison-institution inertia (see figure 3). The anticipated cost-savings have not been fully realized.

A second legislative change focused on the NJ rule that any drug sales within 1000 feet of a school carried a mandatory minimum sentence. In 2010, Gov. Corzine signed a new law relaxing the mandate, and permitting retroactive sentence reductions for those previously incarcerated pursuant to the law.⁶⁰ The change in part reflected a 2004 NJ Commission study finding that "96% of those inmates imprisoned for violating the school zone law" were African American and Hispanic.⁶¹ People of color disproportionately lived in urban environments, and 1000 feet from a school or daycare center covered a much higher proportion of the landscape in cities than in the suburbs.⁶²

⁵⁷ DRUG POL'Y ALL., DRUG COURTS ARE NOT THE ANSWER: TOWARD A HEALTH-CENTERED APPROACH TO DRUG USE 16 (2011), https://drugpolicy.org/sites/default/files/Drug%20Courts%20Are%20Not%20the%20Answer_Final2.pdf; Stefanie Klag et al., *The Use of Legal Coercion in the Treatment of Substance Abusers: An Overview and Critical Analysis of Thirty Years of Research*, 40 SUBSTANCE USE & MISUSE 1777, 1786-87 (2005).

⁵⁸ N.J. CTS., *supra* note 29, at 4; Caren Chesler, *New Jersey's Drug Court Program: Making the Sentence Fit the Crime*, N.J. SPOTLIGHT NEWS (Oct. 22, 2013), <https://www.njspotlight.com/2013/10/13-10-22-new-jersey-s-drug-court-program-making-the-sentence-fit-the-crime>.

⁵⁹ N.J. CTS., *supra* note 29, at 16.

⁶⁰ Stout & Barlyn, *supra* note 38, at 551.

⁶¹ *Id.* at 549.

⁶² *Id.* at 543.

Because of this change in the law, both recidivism and state prison populations fell perceptibly. The percent of those rearrested/reconvicted/reincarcerated within 3 years of conviction fell 10-15%, or 4.5-7.0 percentage points, from 2010 to 2015.⁶³ However, technical parole violations rose as a percent of those reincarcerated, from 35.6% in 2010 to 58.6% in 2015.⁶⁴ Those incarcerated for drug offenses dropped 62.1% between 2011 and 2020, from 6135 to 2323.⁶⁵

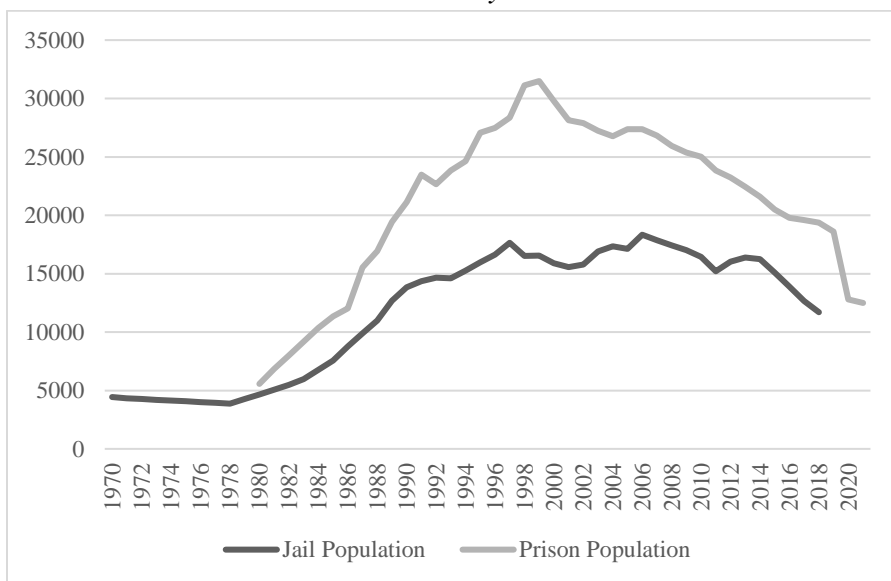
⁶³ JUV. JUST. COMM., N.J. DEP'T OF CORR., 2015 RELEASE COHORT OUTCOME REPORT: A THREE-YEAR FOLLOW-UP 11 (2015), https://www.state.nj.us/corrections/pdf/offender_statistics/2015_Release_Recidivism_Report.pdf. A *Star Ledger* Editorial suggested that on Gov. Corzine's watch, the practice of minor parole violations leading to re-imprisonment was reduced. This is not borne out by these data. *Compare id.* at 12, with Editorial, *N.J. is a Leader on Criminal Justice Reform. So Why This Racial Disparity?*, NJ.COM (Jan. 16, 2019, 10:03 PM), https://www.nj.com/opinion/2016/06/nj_is_a_leader_on_criminal_justice_reform_so_why_t.html.

⁶⁴ JUV. JUST. COMM., *supra* note 64, at 12.

⁶⁵ *Compare* N.J. DEP'T OF CORR., OFFENDERS IN NEW JERSEY CORRECTIONAL INSTITUTIONS ON JANUARY 1, 2011, BY BASE OFFENSE (2011), https://www.state.nj.us/corrections/pdf/offender_statistics/2011/By%20Offense%202011.pdf, with N.J. DEP'T OF CORR., OFFENDERS IN NEW JERSEY CORRECTIONAL INSTITUTIONS ON JANUARY 1, 2020, BY BASE OFFENSE (2020), https://www.state.nj.us/corrections/pdf/offender_statistics/2020/2020_Offense.pdf. Detailed reports for each year are available for download at *Offender Information: Offender Statistics*, N.J. DEP'T OF CORRECTIONS (2022), <https://www.state.nj.us/corrections/pages/OffenderInformation.html#OffenderStats>. Those imprisoned for drug offenses fell by 40% between Jan. 2020 and Jan. 2021, during the pandemic. *See* N.J. DEP'T OF CORRS., OFFENDERS IN NEW JERSEY CORRECTIONAL INSTITUTIONS ON JANUARY 1, 2021, BY BASE OFFENSE (2021), https://www.state.nj.us/corrections/pdf/offender_statistics/2021/By%20Offense%202021.pdf. This likely reflects lower arrests, fewer court hearings, and early releases due to the pandemic.

However, over the same period, jail populations continued to grow (see figure 4).⁶⁶ In New Jersey, jails are reserved for those awaiting trial and those found guilty of lower-level 3rd and 4th degree crimes (including drug possession), while state prison is for 1st and 2nd degree crimes such as violent and property crimes captured by the FBI crime index.⁶⁷ Drug sales of sufficient amounts are also 2nd degree crimes.

Figure 4
Jail Population, 1970-2018, and Prison Population, 1980-2021, New Jersey



⁶⁶ The source for figure 4 jail population is *Incarceration Trends Dataset*, VERA INST. OF JUST. (2020), <https://github.com/vera-institute/incarceration-trends> (last visited Apr. 28, 2022); for the prison population, the source is *Criminal Justice Facts, State-by-State Data, Detailed State Data*, SENT’G PROJECT, <https://www.sentencingproject.org/the-facts/#detail?state1Option=New%20Jersey&state2Option=0> (last visited Apr. 28, 2022).

⁶⁷ *The Criminal Justice Process*, N. J. CTS, <https://www.njcourts.gov/courts/criminal/criminalprocess.html?lang=eng> (last visited Apr. 2, 2022).

The reason for increasing jail populations was in part delays in the courts and poverty-based detention. A 2013 study by VanNostrand determined that almost 40% of those jailed were there because they had the legal option to post bail, but practically could not afford to.⁶⁸ Of these, 31% could not afford to post up to \$2,500.⁶⁹ The study also found that judicial backlogs forced those in jail to wait, on average, 314 days to have their cases heard –86% of a full year.⁷⁰ In fact the bulk of those in NJ jails – three out of four people in 2012 - were awaiting trial.⁷¹

Effective in 2017, the NJ Criminal Justice Reform Act (CJR) sought to institute a new risk-assessment stratagem that eliminated cash bail for those deemed unlikely to flee or commit another crime, while incarcerating others without bail; similar underlying statistical models to assess risk have been criticized as racist in practice, twice as likely to

⁶⁸ MARIE VANNOSTRAND, LUMINOSITY & DRUG POL’Y ALL., NEW JERSEY JAIL POPULATION ANALYSIS: IDENTIFYING OPPORTUNITIES TO SAFELY AND RESPONSIBLY REDUCE THE JAIL POPULATION 13 (2013), https://drugpolicy.org/sites/default/files/New_Jersey_Jail_Population_Analysis_March_2013.pdf.

⁶⁹ *Id.* Table 11 indicates that 1,547 inmates could not afford to post \$2,500 bail, and 5006 could not afford to post any bail. Their ratio is 30.9%.

⁷⁰ *Id.* at 14. In 1982, incarcerated people in Essex County jails brought suit for unconstitutional conditions of confinement, with the aid of the New Jersey Office of Inmate Advocacy under the Public Advocate and the New Jersey Office of the Public Defender. *See Essex Cnty. Jail Annex Inmates v. Treffinger*, 18 F. Supp. 2d 445 (D.N.J. 1998). With other similar recurring suits, this led to consent decrees mandating a county-subsidized bail program for those who could not afford to post bail, and, ironically, the construction of a new jail. This unintended consequence of activism against overcrowding proved a common pattern in the era of the expanding Drug War. *See* Joshua Guetzkow & Eric Schoon, *If You Build It, They Will Fill It: The Consequences of Prison Overcrowding Litigation*, 49 L. & SOC’Y REV. 401, 426-28 (2015).

⁷¹ VANNOSTRAND, *supra* note 69, at 11.

falsely treat Blacks as future criminals.⁷² VanNostrand had estimated that such detained people accounted for 38.5% of everyone in NJ jails, or about 5,000 incarcerated people.⁷³ From late 2015 to 2018, “New Jersey’s pretrial jail population ... declined 43.9 percent,” from 8,899 to 4,995 people.⁷⁴

The estimated cost of housing someone in jail is much less than for prison, in 2012 reported to be “\$2,887 for every inmate per year diverted from the county jail” as compared to “\$38,380 per inmate from state prison.”⁷⁵ In current dollars, that suggests that the Criminal Justice Reform Act did save \$21.9 million in expenses for county jails annually, while releasing people to less-invasive monitoring than probation and the chance to live their lives while awaiting trial.

The COVID-19 pandemic put NJ jail and prison populations at extreme risk, the disease spread like wildfire in buildings at or exceeding 90% occupancy, and the inadequacy of health resources were

⁷² Although the jail population decreased, racial disparities in incarceration remained the same. GLENN A. GRANT, N.J. CRTS., CRIMINAL JUSTICE REFORM 2018: REPORT TO THE GOVERNOR AND THE LEGISLATURE 12 (2018), <https://www.politico.com/states/f/?id=00000169-df3a-d48d-a57d-dfff7f270000>. See also Julia Angwin et al., *Machine Bias; There’s Software Used Across the Country. And it’s Biased Against Blacks*, PROPUBLICA (May 23, 2016), <https://www.propublica.org/article/machine-bias-risk-assessments-in-criminal-sentencing>; CHELSEA BARABAS ET AL., TECHNICAL FLAWS OF PRETRIAL RISK ASSESSMENTS RAISE GRAVE CONCERNS 1 (2019), https://dam-prod.media.mit.edu/x/2019/07/16/TechnicalFlawsOfPretrial_ML%20site.pdf; Sarika Ram, *The PSA Is Spreading -- And Fast*, MAPPING PRETRIAL INJUSTICE (Sept. 20, 2021), <https://pretrialrisk.com/the-psa-is-spreading-and-fast>.

⁷³ VANNOSTRAND, *supra* note 69, at 13.

⁷⁴ GRANT, *supra* note 73, at 38-39.

⁷⁵ Matt Friedman, *N.J. Senate Passes Bill Creating Mandatory Treatment Program for Nonviolent Drug Offenders*, N.J.COM (June 28, 2012, 10:23 PM), https://www.nj.com/news/2012/06/nj_senate_passes_bill_creating.html (quoting the N.J. Office of Legislative Services).

underscored.⁷⁶ More than half of those imprisoned had underlying medical conditions, making them vulnerable if infected,⁷⁷ and by May 2020, NJ had the highest rate of death in prison in the nation.⁷⁸ Over the next several months, advocates succeeded in pressing the courts to mandate prisoner releases.⁷⁹ By October legislation permitted the release of prisoners up to eight months early during public-health emergencies.⁸⁰ In 2020, 5,300 were released, a 40% reduction in state prisoners, and the Omicron variant led to further releases in early 2022.⁸¹ COVID-19 brought home the public-health reality that seemingly disparate populations could infect each other. The prisoner-release program evidenced lower recidivism (9%) than was usual

⁷⁶ Blake Nelson, *Social Distancing is Really Hard in N.J. Prisons. And That Could Be a Problem for All of Us*, N.J. ADVANCE MEDIA (Apr. 11, 2020, 11:33 AM), <https://www.nj.com/coronavirus/2020/04/social-distancing-is-difficult-in-nj-prisons-that-could-be-a-problem-for-all-of-us.html>.

⁷⁷ *Id.*

⁷⁸ Blake Nelson, *N.J. Prisons Have Highest Coronavirus Death Rate in the Nation, New Study Shows*, N.J. ADVANCE MEDIA (May 2, 2020, 1:54 PM), <https://www.nj.com/coronavirus/2020/05/nj-prisons-have-highest-coronavirus-death-rate-in-the-nation-new-study-shows.html>.

⁷⁹ Nicholas Pugliese, *Despite Some Releases, N.J. Has Highest COVID-19 Prison Death Rate in the Nation*, WHYY (May 14, 2020), <https://whyy.org/articles/despite-promise-of-release-n-j-has-highest-covid-19-prison-death-rate-in-the-nation/>; *NJ Public Health Credits Law Signed, Setting National Standard for COVID-19 in Prisons*, AM. CIV. LIBERTIES UNION N.J. (Oct. 19, 2020), <https://www.aclu-nj.org/en/press-releases/nj-public-health-credits-law-signed-setting-national-standard-covid-19-prisons>.

⁸⁰ *Governor Murphy Signs Legislation Requiring Public Health Emergency Credits to be Awarded to Certain Inmates and Parolees during a Public Health Emergency*, STATE OF N.J.: OFF. OF THE GOVERNOR (Oct. 19, 2020), <https://www.nj.gov/governor/news/news/562020/20201019c.shtml>.

⁸¹ Taylor Jung, *More Inmates to be Freed in COVID-19 Release Program*, N.J. SPOTLIGHT NEWS (Feb. 10, 2022), <https://www.njspotlightnews.org/2022/02/covid-19-prison-release-program-public-health-emergency-gov-phil-murphy-inmates>.

(16%), with most re-arrests due to parole violations.⁸² Its success raises questions about why we continue to incarcerate people for such long periods, with all the damage to the person and their families, and the expense, that entails.

In 2006, New Jersey authorized towns to permit needle exchanges, in order to reduce the likelihood of transmitting HIV and Hepatitis-C.⁸³ However, only seven towns housed such exchanges.⁸⁴ After Atlantic City moved to outlaw them in 2021, the State passed a new mandate: towns no longer have the authority to prohibit needle exchanges, which would be managed by the N.J. Department of Health.⁸⁵ Funds were allocated to finance medical staff to test for pregnancy and STDs, and further legislation decriminalized possession of syringes (formerly considered drug paraphernalia).⁸⁶

⁸² Karen Yi, *A Year After NJ Released Thousands from Prison, Only 9% are Back in Custody*, GOTHAMIST (Jan. 7, 2022, 7:19 PM), <https://gothamist.com/news/year-after-nj-released-thousands-early-prison-only-9-are-back-custody>.

⁸³ Brent Johnson & Susan K. Livio, *N.J. Needle Exchange Programs, Proven to Reduce Spread of HIV, Will Expand Under New Law*, NJ.COM (Jan. 18, 2022, 1:31 PM), <https://www.nj.com/politics/2022/01/nj-needle-exchange-programs-proven-to-reduce-spread-of-hiv-will-expand-under-new-law.html>.

⁸⁴ *Id.*

⁸⁵ *Id.*

⁸⁶ Rebecca Everett, *N.J. Made it Legal for Drug Users to Buy Syringes but Not Possess Them. New Bill Could Fix this Legal Quandary*, NJ.COM (Jan. 29, 2021), <https://www.nj.com/news/2021/03/nj-made-it-legal-for-drug-users-to-buy-syringes-but-not-possess-them-new-bill-could-fix-this-legal-quandary.html>.

III. THE NEW JERSEY PRISON-INDUSTRIAL COMPLEX

The ten-year effort by NJ to decarcerate was partly successful. The effort to chip away at the carceral population did lead to a 17% decline from 23,123 in 2013 in the state prison system to 19,212 in 2019, and a decline of 44% in the jail population.⁸⁷ The latter arguably primarily reflected the 40% reduction in the length of time spent in jail pretrial.⁸⁸

However, inertia is in the nature of institutions, and the components of the prison-industrial complex are no exception, including the police, prosecutors, jails and prisons, courts, the parole board, etc. As observed above, prison and jail employment had essentially returned to 2012 levels by 2019, only 7% below 2010 levels, which is a small decline compared to the much larger reduction in jail and prison populations (see figure 4).

We also see that the pattern of arrest for drug possession does not seem to be driven by the goal of stemming the use of serious drugs, but more a function of habit and ease of identifying users (see figure 5).⁸⁹ Nationally, prescription opioid deaths rose steadily from 1999 through 2007, those from heroin accelerated dramatically in 2010 (more than quintupling by 2018), and deaths from synthetics like fentanyl accelerated even more steeply in 2013.⁹⁰ Overdose deaths from synthetic opioids about equal those from heroin and prescription opioids combined (see figure 5). In New Jersey, almost 90% of all overdose deaths are currently due to opioids (see figure 6).⁹¹ But the arrest record

⁸⁷ *Incarceration Trends Dataset*, *supra* note 67; *Criminal Justice Facts, State-by-State Data, Detailed State Data*, *supra* note 67.

⁸⁸ GRANT, *supra* note 73, at 21.

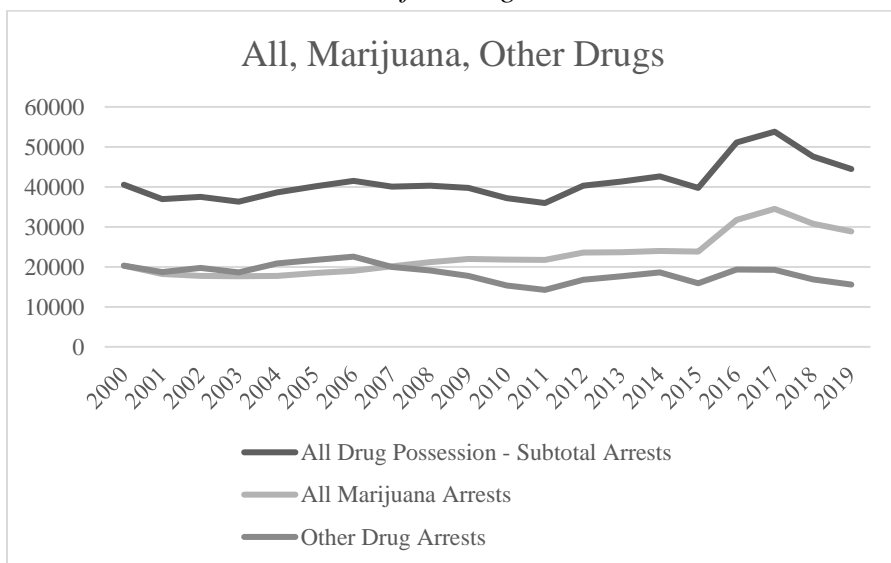
⁸⁹ See N.J. STATE POLICE, *supra* note 24 for raw data contributing to figure 5.

⁹⁰ *Opioid Data Analysis and Resources*, CTRS. FOR DISEASE CONTROL & PREVENTION (Mar. 10, 2021), <https://www.cdc.gov/opioids/data/analysis-resources.html>.

⁹¹ See *Opioid Overdose Deaths and Opioid Overdose Deaths as a Percent of All Drug Overdose Deaths*, KAISER FAM. FOUND. (2020),

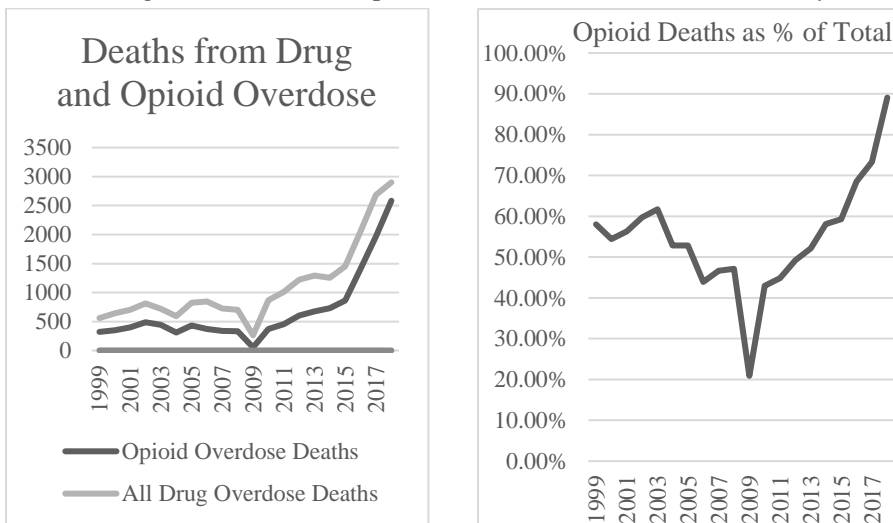
suggests that opioid possession became less important to law enforcement after a 2006 peak, while marijuana arrests trended upward (see figure 6). Increasing national public-health concerns about an opioid epidemic in the last ten to fifteen years is not evidenced in NJ police arrest practices, again speaking to institutional inertia. It also underlines the disconnect between effective public-safety practices seeking to save lives, and current patterns of policing and incarceration.

Figure 5
NJ Arrests for Drug Possession



<https://www.kff.org/other/state-indicator/opioid-overdose-deaths/?currentTimeframe=0&sortModel=%7B%22colId%22:%22Location%22,%22sort%22:%22asc%22%7D> (last visited Apr. 28, 2022) for raw data contributing to figure 6.

Figure 6
Drug Overdose and Opioid Overdose Deaths, New Jersey



Almost one-third of NJ adults have used illegal drugs in their lifetime (32%).⁹² But only a handful, about 3.3%, are drug-dependent, and 1.5% are addicted.⁹³ The rest only use drugs recreationally. It is estimated that in New Jersey, about 219,000 people have an illicit drug or pain-reliever disorder, and only about 18% get treatment.⁹⁴ It is those

⁹² SUZANNE BORYS & ROBERT P. CULLETON, BLOUSTEIN CTR. FOR SURVEY RSCH., THE 2009 NEW JERSEY HOUSEHOLD SURVEY ON DRUG USE AND HEALTH iv (2010),

https://www.state.nj.us/humanservices/dmhas/publications/surveys/Household%20Survey%20on%20Drug%20Use%20&%20Health/2009/Survey_ALL.pdf.

⁹³ Extrapolating from national data. See JENNIFER BRONSON ET AL., U.S. DEP'T OF JUST., DRUG USE, DEPENDENCE, AND ABUSE AMONG STATE PRISONERS AND JAIL INMATES, 2007-2009 4 (2017, rev. 2020), <https://bjs.ojp.gov/content/pub/pdf/dudaspji0709.pdf>.

⁹⁴ See SUBSTANCE ABUSE & MENTAL HEALTH SERVS. ADMIN., NEW JERSEY – NATIONAL SURVEY ON DRUG USE AND HEALTH: 2016-2017 STATE-SPECIFIC TABLES OF MODEL-BASED ESTIMATES tbl. 71 (2017), <https://www.samhsa.gov/data/sites/default/files/cbhsq-reports/NSDUHsaeSpecificStates2017B/NSDUHsaeNewJersey2017.pdf>.

who are drug-dependent or addicted who are in need of help, and most likely to break the law to support their addiction. They may sell drugs or engage in other illegal activities to finance their consumption.

A 2013 New Jersey study by the Division of Mental Health and Addiction Services found that in addition to 53,719 arrests for drugs, another 16,280 arrests for assault, robbery/burglary/larceny, theft, or prostitution were also drug-motivated (see table 1 for their results).⁹⁵ Combined these constitute 56.2% of all 124,630 NJ arrests that year.⁹⁶ Decriminalizing drugs, coupled with getting people with addictions the help they need, should reduce by more than half the total number of arrests in the state.

⁹⁵ N.J. DEP'T HUMAN SERVS., DIV. OF MENTAL HEALTH & ADDICTION SERVS., NEW JERSEY CHARTBOOK OF SUBSTANCE ABUSE RELATED SOCIAL INDICATORS: BERGEN COUNTY 14 (2016), <https://www.nj.gov/humanservices/dmhas/publications/epidemiological/County%20Chart%20Books/2016/Bergen.pdf>, [hereafter DIV. OF MENTAL HEALTH]. Another study provided estimates of drug-motivated crime based on a 1997 Survey of Inmates by the U.S. Department of Justice. See Richard B. Felson & Jeremy Staff, *Committing Economic Crime for Drug Money*, 63 CRIME & DELINQ. 375, 382 (2017). It indicated that 44%/27% of heroin/cocaine sellers, and 38%/24% of those found guilty of possessing heroin/cocaine, did so to finance their own drug use.

⁹⁶ See *supra*, note 96 and accompanying text.

Table 1
New Jersey Drug-Related Crime Arrests

NJ Drug-Related Crimes	Arrests by Category	Arrests attributable to drug use (all)	Drug Attributable arrest rates /100,000
Homicide	238	17	0.2
Aggravated Assault	7026	358	4.1
Sexual Assault	296	11	0.1
Other Assault	23029	1,750	19.8
Robbery	3698	1,035	11.7
Burglary	5754	1,933	21.9
Larceny	25679	10,041	113.7
Auto Theft	694	123	1.4
Stolen Property	3329	867	9.8
Prostitution	1168	145	1.6
Drug Laws	53719	53,719	608.2
Total	124630	70,000	

Another dimension of the Drug War and the prison-industrial complex is probation and parole. Someone arrested for drug possession may be released on probation, which will require them to honor certain restrictions on their activities, associations, freedom of movement, and schedule for a period of one to five years.⁹⁷ Someone released from prison consistent with their sentence before their maximum term of incarceration will similarly be on parole for up to five years with specified restrictions and curfews.⁹⁸ These restrictions may include

⁹⁷ HEATHER YOUNG KEAGLE, N.J. SUPER. CT. APP. DIV., MANUAL ON NEW JERSEY SENTENCING LAW 179 (2022), <https://www.njcourts.gov/attorneys/assets/attyresources/manualsentencinglaw.pdf>.

⁹⁸ Matt Clarke, *NJ Supreme Court: Excess Time in Prison Must be Used to Reduce Parole Period*, PRISON LEGAL NEWS (Jan. 1, 2022),

having to meet regularly with a probation or parole officer, random drug or alcohol testing, approval of residence, work and home visits and warrantless searches of their person or property, geographic constraints, scheduled payment of fines, stay away from certain people or places, no gun ownership, and community service.⁹⁹ A violation of any of these, such as missing meetings with the probation officer or associating with a friend who has served time, can mean returning to court and lead to new restrictions, more time on probation or parole, or in the case of probation, being remanded to jail or prison.¹⁰⁰ Until 2019 in NJ, those on parole or probation for an indictable offense had no right to vote.¹⁰¹

The magnitude of community supervision, and probation in particular, far exceeds incarceration. About 40% as many people are on parole as are incarcerated, and four times the total prison and jail population is on probation – in New Jersey, in 2018 there were 138,000 probationers versus 34,000 incarcerated people.¹⁰² In other words, 18% of the total who are subject to carceral control – including court or

<https://www.prisonlegalnews.org/news/2022/jan/1/nj-supreme-court-excess-time-prison-must-be-used-reduce-parole-period/#:~:text=Under%20the%20state's%20No%20Early,for%20a%20second%2Ddegree%20crime>.

⁹⁹ See N.J. ADMIN. CODE § 10A:71-6.4 (2022); *Probation in New Jersey*, LENTO L. FIRM, <https://www.njcriminaldefensellc.com/probation-in-new-jersey> (last visited Apr. 26, 2022); Ronald Fraser, Opinion, *NJ Parole System Should Promote Success Rather than Punishing Failure*, ASBURY PARK PRESS (Feb. 16, 2020, 5:00AM), <https://www.app.com/story/opinion/columnists/2020/02/16/nj-parole-system-should-promote-success-rather-than-punishing-failure/4773437002>.

¹⁰⁰ See N.J. ADMIN. CODE § 10A:72-2.4, § 10A:71-6.4 (2022).

¹⁰¹ Jonah Walters, *People with Convictions Cast Ballots in New Jersey Primary after Regaining Right to Vote*, GUARDIAN (July 7, 2020, 8:00 AM), <https://www.theguardian.com/us-news/2020/jul/07/new-jersey-former-felons-restored-voting-rights-primary>.

¹⁰² *New Jersey Profile*, PRISON POL'Y INITIATIVE, <https://www.prisonpolicy.org/profiles/NJ.html> (last visited Apr. 26, 2022).

corrections supervision - are currently in jail or prison.¹⁰³ In 2020, the New Jersey Parole Board was allocated \$98.8 million for 15,984 parolees, or \$6,181 for each person.¹⁰⁴

Moreover, the Office of Probation Services monitors and enforces court orders and oversees the 2910 probation officers and correctional treatment specialists across the state.¹⁰⁵ Probation fees and fines imposed¹⁰⁶ are devised to finance the program's \$38.6 million in expenditures, although about half is received, leaving \$19.1 million for the courts and state budget to carry.¹⁰⁷ In addition, aggregate probation-officer salaries were \$207.8 million in 2019.¹⁰⁸

The consequence of this massive prison-industrial complex is that, nationally, almost one-third of all Blacks (31%) have ever experienced incarceration, including prison or jail, vs. 17% of Whites and Hispanics.¹⁰⁹ Furthermore, approaching two out of three African Americans (63%) have ever had an immediate family member incarcerated, while the figure is 42% for white individuals and 48% for

¹⁰³ *Id.*

¹⁰⁴ STATE OF N.J. OFF. OF LEGIS. SERVS., LEGISLATIVE FISCAL ESTIMATE, ASSEMB. 219 - 4369, at 2 (2020), https://pub.njleg.state.nj.us/Bills/2020/A4500/4369_E1.PDF.

¹⁰⁵ *Occupational Employment and Wage Statistics*, *supra* note 34.

¹⁰⁶ These fines pose a burden for poor people. For drug-related crimes, the schedule of Drug Enforcement and Demand Reduction penalties requires \$3,000 for a first-degree, \$2,000 for a second-degree, \$1,000 for a third-degree, \$750 for a fourth-degree crime, and \$500 for disorderly persons or petty disorderly persons. KEAGLE, *supra* note 98.

¹⁰⁷ N.J. CTS., *supra* note 29, at 31; OFF. OF MGMT. & BUDGET, DEP'T OF THE TREASURY, THE GOVERNOR'S FY2021 BUDGET D-244, D-425 (2020), <https://www.nj.gov/treasury/omb/publications/21budget/pdf/FY21GBM.pdf> [hereafter N.J. OFF. OF MGMT. & BUDGET].

¹⁰⁸ See *Occupational Employment Statistics*, *supra* note 34.

¹⁰⁹ See generally Peter K. Enns et al., *What Percentage of Americans Have Ever Had a Family Member Incarcerated?: Evidence from the Family History of Incarceration Survey (FamHIS)*, 5 SOCIUS: SOC. RES. DYNAMIC WORLD 1, 14 (2019).

Hispanics.¹¹⁰ As we saw from the NJDOH MHAS chartbook,¹¹¹ the Drug War is the central underlying source of initial arrest, the pipeline to every form of carceral entanglement: incarceration, parole, and probation.

IV. POTENTIAL SAVINGS FROM DECRIMINALIZING DRUGS: DIRECT COSTS

To shift to a public-health approach requires releasing resources currently absorbed by the Drug War and prison-industrial complex in order to finance treatment and to reinvest in damaged communities. Under decriminalization, drugs are still illegal, so prohibition on the supply side will still generate public costs. But regulating the demand side will shift to something more like dispensing parking or traffic tickets. Arrest, judicial hearings, and incarceration for drug use will be eliminated, and instead citations will be issued.

If drugs are decriminalized, what cost savings can be reallocated to treatment and to rehabilitate and repair Drug-War-torn communities? There are three axes of direct cost of the Drug War: police; judiciary; and the carceral system of imprisonment, probation and parole. A later section will examine indirect costs of the Drug War: the collateral costs of healing its casualties.

¹¹⁰ *Id.* at 9.

¹¹¹ DIV. OF MENTAL HEALTH, *supra* note 96.

A. Police

Expenditures on state police are decided in the state budget-making process.¹¹² Expenditures on local police employed by each of 565 municipalities and twenty-one counties are set by local budgets.¹¹³ Both NJ state police officers (State Troopers Fraternal Association (rank below sergeant), the State Troopers NCO Association of New Jersey (sergeants and detectives) and the State Troopers Superior Officers Association (lieutenants and captains)) and the officers of NJ municipalities (NJ State PBA – 11,000 members reported on its website, Fraternal Order of Police – NJ Labor Council) are frequently union members, so that their wages and working conditions are negotiated through collective bargaining.¹¹⁴

The US Census Bureau reported that state and local police spending was \$3.62 billion, or \$3.98 billion in February 2022 dollars.¹¹⁵

¹¹² OFF. OF MGMT. & BUDGET, *supra*, note 108. State allocations may include transfers from the federal government, for instance, for the Nuclear Emergency Response Program, see *id.* at D-137.

¹¹³ However, some federal and state monies come through the state budget to local police departments through the state Department of Law and Public Safety. See, e.g., “body cameras,” *Id.* at C22, and Colleen O’Dea, *NJ Lawmakers Vote to put \$58 Million towards Police Body Cameras*, NJ SPOTLIGHT NEWS (Dec. 18, 2020), <https://www.njspotlightnews.org/2020/12/nj-lawmakers-vote-to-put-58-million-toward-police-body-cameras/>.

¹¹⁴ *Welcome*, STATE TROOPERS FRATERNAL ASS’N, <https://stfa.org/welcome/> (last visited May 17, 2022); *Who We Are*, N.J. STATE TROOPERS NON-COMMISSIONED OFFICERS ASS’N, <https://www.nco1921.org/> (last visited May 17, 2022); *President’s Welcome*, NEW JERSEY STATE TROOPERS SUPERIOR OFFICERS’ ASS’N, <https://stsoa.org/wp/index/> (last visited May 17, 2022); *Home*, N.J. STATE POLICEMEN’S BENEVOLENT ASS’N, njspba.com (last visited May 17, 2022); FRATERNAL ORDER OF POLICE-LABOR COUNCIL N.J., <https://fopnjlc.org/> (last visited May 17, 2022).

¹¹⁵ U.S. CENSUS BUREAU, 2019 STATE & LOCAL GOVERNMENT FINANCE HISTORICAL DATASETS AND TABLES, tbl. 1 (2021), <https://www.census.gov/data/datasets/2019/econ/local/public-use->

Not all of these funds will be impacted by decriminalizing drugs, it is necessary to distinguish overhead expenses from variable costs. When police forces downsize, they may not eliminate managerial positions, only cutting those staff who are no longer investigating and pursuing drug consumers.

In New Jersey, police supervisors are 17.4% of all police, detectives, sheriffs and supervisors, and get 24.3% of all police salaries.¹¹⁶ The U.S. Bureau of Labor Statistics (BLS) includes those who spend as much as 20% of their time working as police in this category;¹¹⁷ we can allocate 80% of supervisor salaries to fixed costs, recognizing that in many small towns, even chiefs are active in some police cases.¹¹⁸ In addition, “civilian” personnel are almost one-fourth

datasets.html (review New Jersey figures in the “Missouri-Wyoming” spreadsheet). Unless otherwise specified, “current dollars” will mean figures have been converted to February 2022 dollars, using the consumer price index. See Fed. Rsrv. Bank of St. Louis, *Consumer Price Index for All Urban Consumers: All Items in U.S. City Average*, FRED ECON. DATA: ST. LOUIS FED. (2022), <https://fred.stlouisfed.org/series/CPIAUCSL> (Index 1982-1984=100, Monthly, Seasonally Adjusted).

¹¹⁶ See *Occupational Employment Statistics*, *supra* note 34.

¹¹⁷ “First-line managers and supervisors of production, service, and sales workers who spend more than 80 percent of their time performing supervisory activities are classified separately in the appropriate supervisor category . . .” *2000 Standard Occupational Classification (SOC) User Guide*, U.S. BUREAU OF LAB. STAT. (Mar. 25, 2011), <https://www.bls.gov/soc/socguide.htm>.

¹¹⁸ For instance, James McCabe found that the proportion of staff on patrol, a more limited measure of arresting officers, ranged from 32% to 97% across 62 U.S. communities. JAMES MCCABE, INT’L CITY/CNTY. MGMT. ASS’N, *AN ANALYSIS OF POLICE DEPARTMENT STAFFING: HOW MANY OFFICERS DO YOU REALLY NEED?* 9 (2013)

[https://icma.org/sites/default/files/305747_Analysis of Police Department Staffing _ McCabe.pdf](https://icma.org/sites/default/files/305747_Analysis_of_Police_Department_Staffing_McCabe.pdf). Nationally, “About 3% of all local police departments served populations of 100,000 or more, and they employed about 52% of all full-time sworn police officers.” SHELLEY S. HYLAND & ELIZABETH DAVIS, U.S. DEP’T OF JUST., *LOCAL POLICE DEPARTMENTS*,

of all NJ state and local police employees,¹¹⁹ although making about one-half as much as officers' and detectives' base pay.¹²⁰ Assuming administrative staff are assigned to overhead functions in proportion to police supervisory employment, and including their salaries in the totals, then overhead salaries would be 19.1% of all salaries.

The BLS salary figures do not include benefit packages, which tend to be a higher percent of total compensation than in private employment. First, excluding pensions and overtime, public-sector workers in general earn 31% beyond their base salary in paid leave and health insurance.¹²¹ Second, police are given ample pension funds since they are expected to retire after twenty to twenty-five years, serving

2016: PERSONNEL 1 (2019), <https://bjs.ojp.gov/content/pub/pdf/lpd16p.pdf>. In New Jersey, only four cities (Newark, Jersey City, Paterson, Elizabeth) are that large, and their combined reported police forces represent only 13% of New Jersey's police employment. See, e.g., *About the Elizabeth Police Department*, ELIZABETH POLICE DEP'T, <https://www.elizabethnj.org/160/About> (last visited Apr. 7, 2022); *Division of Police*, CITY OF JERSEY CITY, <https://jerseycitynj.gov/CityHall/PublicSafety/Police> (last visited Apr. 26, 2022); *Newark, New Jersey Police*, POLICE DATA INITIATIVE, <https://www.policedatainitiative.org/participating-agencies/newark-new-jersey-police> (last visited Apr. 7, 2022); *Home*, PATERSON POLICE DEP'T, <http://www.patersonpd.com/> (last visited Apr. 26, 2022). Either those cities do not have ample supervisory pyramids, or many smaller New Jersey towns have relatively large police forces. Taking only 80% of supervisors as strictly supervisory seems appropriate, since in small towns supervisors will help work cases.

¹¹⁹ *Table 77: Full-Time Law Enforcement Employees*, U.S. DEP'T OF JUSTICE: FED. BUREAU OF INVESTIGATIONS (2019), <https://ucr.fbi.gov/crime-in-the-u.s/2019/crime-in-the-u.s.-2019/tables/table-77>.

¹²⁰ See *Occupational Employment Statistics*, *supra* note 34.

¹²¹ News Release, Bureau of Lab. Stat., U.S. Dept' of Lab., Employer Costs for Employee Compensation (Mar. 19, 2020), <https://www.bls.gov/news.release/pdf/ecec.pdf>.

while young.¹²² For state police alone, the State Police Retirement System in FY 2019 was an additional 30.3% beyond the expenditures on state police operations;¹²³ for New Jersey municipalities, pension contributions in 2019 were 29.5% of police salaries.¹²⁴ Nevertheless, because contributions to benefits packages tend to be in proportion to base pay, incorporating these two kinds of benefits in both the numerator and denominator of any ratio should not change supervisors' share of total compensation.

However, overtime pay may be more common for, although not limited to, patrol officers.¹²⁵ Overtime is charged at 150% of base pay, and is standard compensation for police court appearances while off-

¹²² N.J. DEP'T OF PENSIONS & BENEFITS: POLICE AND FIREMEN'S RETIREMENT SYS., MEMBER GUIDEBOOK (2022), <https://www.nj.gov/treasury/pensions/documents/guidebooks/pfrsbook.pdf>; Dustin Racioppi, *NJ Public Pensions Face Fiscal Peril as New Police and Fire Retirees Grow, Report Says*, NORTHJERSEY.COM (Dec. 14, 2021), <https://www.northjersey.com/story/news/new-jersey/2021/12/14/nj-pension-system/6464399001/>.

¹²³ N.J. OFF. OF MGMT. & BUDGET, N.J. DEP'T OF TREASURY, THE GOVERNOR'S FY2021 BUDGET D-248, D-425 (2020), <https://www.nj.gov/treasury/omb/publications/21budget/pdf/FY21GBM.pdf>. The 2020 adjusted appropriation to the state police retirement system on p. D-428 was 45% of state police operations on p. D-246.

¹²⁴ N.J. DIV. OF PENSIONS & BENEFITS, N.J. DEP'T TREASURY, PFRS LOCAL EMPLOYER BILLING FILE FOR FY2020 (2020); *Local Employer Pension Contributions*, STATE OF N.J. (2021) <https://www.state.nj.us/treasury/pensions/2021-employer-billing.shtml>. That contribution rate is almost twice as high for police as for other public employees. *Id.*, see table for PFRS and table for PERS.

¹²⁵ Recently the Clifton police force proposed adding three police lieutenants to avoid paying more than \$1 million in overtime pay for those supervisory employees. Matt Fagan, *Clifton Seek to Add Three Police Lieutenants to Reduce \$1.3M in OT; Some Raise Questions*, NORTHJERSEY.COM (Jan. 5, 2022, 5:24 AM), <https://www.northjersey.com/story/news/passaic/clifton/2022/01/05/clifton-nj-police-budget-overtime-lieutenants/8899659002>.

duty; weekend and holiday work can be charged at higher rates.¹²⁶ Including overtime pay would raise relative variable costs. Unfortunately, police overtime pay expenses are not readily available. In their absence, a published Brick Township Open Public Records Act (OPRA) response in 2020 did provide overtime pay for its police force.¹²⁷ The ratio of overtime earnings to base salary averaged 4.5% for the top 17% of salaries, and 6.5% for the lowest 83% of salaries, using the proportion based on US BLS OES 2019 data for supervisory vs. non-supervisory police.¹²⁸

For US public-sector employees, employer retirement contributions are on average 19.4% of salaries.¹²⁹ If New Jersey police receive at least that much in employer contributions to their retirement, and we apply the overtime-earnings ratio for supervisors relative to non-supervisors in Brick Township to the state, this reduces the overhead estimate to 18.9%. That is, about 81% of public expenditures on police represents variable costs that should be reduced as the state

¹²⁶ The New Jersey state police union contract rounds up overtime charges to cover three hours, whether or not the work required was three hours long. Bob Jordan & Paul D'Ambrosio, *How Much is Overtime Costing NJ Taxpayers?*, COURIER NEWS & HOME TRIB. (June 19, 2016, 10:24 AM), <https://www.mycentraljersey.com/story/news/investigations/watchdog/government/2016/06/19/how-much-overtime-costing-nj-taxpayers/86111586>.

¹²⁷ Responsive records are available for download in the correspondence reproduced at Ed Mueller, *Police Total Compensation Including Overtime, Unused Sick Days, Unused Vacation Days, Longevity, Base Salary*, OPRAMACHINE (Feb. 23, 2020),

https://opramachine.com/request/police_total_compensation_includ.

¹²⁸ *Occupational Employment and Wage Statistics*, *supra* note 34.

¹²⁹ U.S. BUREAU OF LAB. STAT., EMPLOYEE COSTS FOR EMPLOYEE COMPENSATION 5 (Mar. 19, 2020),

https://www.bls.gov/news.release/archives/ecec_03192020.pdf; *Occupational Employment and Wage Statistics*, *supra* note 34.

decriminalizes drug consumption.¹³⁰ Excluding the police supervisory and administrative budget leaves \$3.23 billion in current dollars in variable police costs (see table 2).¹³¹

¹³⁰ See MELLOR, *supra* note 5, at 59 (estimating that 9.6% of the police budget is for overhead expenses, so 90.4% would be expected to adjust to a decriminalization initiative).

¹³¹ Table 2 data is gathered from Felson & Staff, *supra* note 96; DIV. OF MENTAL HEALTH, *supra* note 96; *Occupational Employment and Wage Statistics*, *supra* note 34; U.S. CENSUS BUREAU, *supra* note 116; *Arrests for Drug Abuse Violations: Percent Distribution by Region, 2019*, FED. BUREAU OF INVESTIGATIONS, <https://ucr.fbi.gov/crime-in-the-u.s/2019/crime-in-the-u.s.-2019/tables/arrest-table.xls> (last visited Apr. 26, 2022).

Table 2

Direct Cost Savings from Decriminalizing Drugs: Police Expenditures

	Excluded	% Applied	Expenditures
Total Police Expenditures, February 2022 \$			\$3.98 billion
Police overhead budget, remaining variable costs	18.9%	81.1%	3.23 billion
Arrests for drugs		21.58%	697.0 million
Drug arrests for possession		84.2%	586.9 million
Adjustments to possession arrests			
Police retained to issue tickets for possession	15%	85%	
Alternative arrests for lesser offenses	20%	80%	
Total Possession Arrests with Adjustments			\$39901 million
Arrests for crimes committed to fund a drug habit			
Economic Crimes to Fund Drug Use			
Economic crimes as share of all arrests, police variable costs		9.9%	318.5 million
Drug-related economic crimes as share of all economic crimes		35.2%	\$112.0 million
Drug Crimes to Fund Drug Use			
Total drug arrests for sales/manufacturing		15.8%	110.2 million
Reduced arrests, drug crimes to fund drug habit		27.0%	\$ 26.8 million
Total: Potential Savings, Policing			\$537.9 million

FBI data indicate that 45.6% of all NJ 2019 arrests were for drugs, which suggests that \$697 million of police spending was for the Drug War.¹³² Using FBI 2019 data for the northeast,¹³³ 84.2% of all drug arrests were for possession, which would reduce the police spending figure associated with decriminalization to \$586.9 million, since decriminalization only directly affects consumption.

However time-consuming investigations in some drug cases may be, as police organize stings to close down sales/manufacturing operations, that does not impact drug-use policing. While police do spend much time on non-arrest activities, this includes answering medical and other calls about drug overdose or drug-related behaviors.¹³⁴ It is reasonable to assume that the proportion of police activities related to drug use follows that proportion of arrests.¹³⁵

¹³² N.J. STATE POLICE, *supra* note 24, at 69-70.

¹³³ *Arrests for Drug Abuse Violations: Percent Distribution by Region, 2019*, *supra*, note 132.

¹³⁴ Jeff Asher & Ben Horwitz, *How do the Police Actually Spend Their Time?*, N.Y. TIMES: UPSHOT (June 19, 2020), <https://www.nytimes.com/2020/06/19/upshot/unrest-police-time-violent-crime.html>.

¹³⁵ Until 2020, N.J. police could confiscate property and cash they considered associated with a crime, and keep it for their department, whether the owner was found guilty or not. Liza Weisberg, *The Use of Civil Asset Forfeiture in New Jersey is Broken*, AM. CIV. LIBERTIES UNION (Dec. 12, 2018, 3:15 PM), <https://www.aclu.org/blog/criminal-law-reform/reforming-police/use-civil-asset-forfeiture-new-jersey-broken>. A new law in January prohibited such asset forfeiture in the absence of criminal charges, or if not found guilty for the offense. Brent Johnson, *Murphy Signs Law Allowing Some NJ Inmates Convicted of Non-Violent Crimes to be Paroled Earlier*, NJ.COM (Jan. 23, 2020, 1:40 PM), <https://www.nj.com/politics/2020/01/nj-reforms-new-social-justice-laws-as-murphy-takes-action-on-martin-luther-king-day.html>. While a second law mandated more detailed reporting by police departments of any property confiscated and an annual report by the attorney general, the latter do not detail the associated criminal charges. *See generally* Memorandum from Gurbir S. Grewal, N.J. Att’y Gen., to David Ridolfino, Off. Budget &

There are a couple of caveats. First, since there will still be tickets issued for possession, assuming that that practice absorbs very little, perhaps 15%, of the former budget associated with arresting drug users, the net savings would be 85%. Second, following Miron and Waldo's 2010 study,¹³⁶ it may be that some drug-possession arrests would have happened for other lesser offenses even if drug-possession were no longer criminal – NJ posts the most serious criminal charge as the reason for the arrest, so these would have to be more minor offenses. Mellor suggests that 20% of such arrests would still happen.¹³⁷ The

Mgmt., Paul A. Sarlo, S. Budget & Appropriations Comm., & John J. Burzichelli, Assemb. Appropriations Comm. (Oct. 4, 2019), https://www.nj.gov/oag/library/asset-forfeiture-reports/2019-Forfeiture-Report_0101-0630.pdf (last visited May 17, 2022). While it would make sense to include asset forfeiture as another cost of the Drug War, there is not adequate specific data. In practice, Kelly's research found that forfeiture increases in the face of high unemployment and presumed budget pressures, suggesting it is used to finance police activities rather than fight drug use, and forfeiture had no statistically significant impact on drug use. Brian D. Kelly, *Fighting Crime or Raising Revenue? Testing Opposing Views of Forfeiture*. INST. FOR JUST. 1, 26-30 (June 2019), <https://new.ij.org/report/fighting-crime-or-raising-revenue/>.

¹³⁶ MIRON & WALDOCK, *supra* note 5, at 3 (suggesting that 50% of such arrests would still have happened, even if drugs were decriminalized).

¹³⁷ MELLOR, *supra* note 5, at 28. Examples of the kinds of 3rd degree and 4th degree crimes that currently rank with or lower than drug possession would include burglary/theft, assault, property damage, stalking, and shoplifting. If drug-use is decriminalized, and some of the revenue saved is put into addressing substance-abuse disorders, it is unlikely that recreational users will be arrested for these crimes in large numbers. See Joseph A. Lombardo, *NJ Crime Classifications: First, Second, Third, Fourth Degree Charges*, LOMBARDO L. OFFS., <https://www.lombardolawoffices.com/criminal-defense/new-jersey-crime-classifications/> (last visited Mar. 23, 2022). As will be seen, to the extent these are economic crimes motivated by drug dependence or addiction, we would in any case predict they would decline by 35% once treatment rather than arrest is offered.

product of these two caveats suggests that \$586.9 million * 85% * 80% = \$399.1 million.

There are additional crimes attributable to drug dependence or addiction that decriminalizing drugs also can abate. For instance, the NJ Department of Health, Div. of Mental Health and Addiction Services found that 35.2% of those serving time for economic crimes had been motivated by their need for money to support drug dependence or addiction (see table 1 above).¹³⁸ As table 1 shows, thefts of various kinds (larceny, robbery, burglary, stolen property) are often driven by the effort to finance drug use; it is also the case that some assaults are linked to being under the influence of drugs.¹³⁹ This suggests we can expand the projected savings associated with decriminalizing drugs correspondingly, since a comprehensive public-health approach will address the addiction that drives other crimes.¹⁴⁰

Economic crimes (excluding all assaults) account for 9.9% of all NJ arrests, and NJDOH MHAS provides data showing the extent to which each category of crime is drug-motivated.¹⁴¹ Applying the underlying rate of drug-motivation to each category of economic crime (robbery, burglary, larceny, auto theft, and prostitution) to FBI 2019 data gives an average share of drug-motivated economic crimes of 35.2%. The proportionate share of variable police expenditures for drug-related economic crimes then adds \$112 million in potential savings.

¹³⁸ DIV. OF MENTAL HEALTH, *supra* note 96, at 14.

¹³⁹ *Id.*

¹⁴⁰ As Felson and Staff showed, depending on the drug, daily drug users were 1.5-4 times as likely to commit a property or drug offense to get drug money as weekly users. Felson & Staff, *supra* note 96, at 383. This suggests that once people are able to get help in breaking their addiction, their intense need for drugs and therefore finance will abate, as will ensuing criminal violations.

¹⁴¹ *Table 69: Arrests by State, 2019*, U.S. DEP'T OF JUSTICE: FED. BUREAU OF INVESTIGATIONS (2019), <https://ucr.fbi.gov/crime-in-the-u.s/2019/crime-in-the-u.s.-2019/topic-pages/tables/table-69>; DIV. OF MENTAL HEALTH, *supra* note 96, at 14.

Furthermore, the Felson and Staff study found that 27% of drug-law violations *per se* were to fund users' consumption.¹⁴² Presumably the bulk of these violations, perhaps 90%, were for sales or manufacturing; some arrests for possession may have included low levels of drugs intended to sell to close friends. This suggests taking police expenses associated with drug arrests for sales and manufacturing, \$110.2 million, and further expanding the policing costs reducible by decriminalization by 90% of 27% of that, or \$26.8 million.

We can now combine savings on arrests for possession, arrests for sales and manufacturing to fund drug dependence or addiction, and arrests for property crimes to finance drug purchases, projecting \$537.9 million in total projected annual savings. This is one-sixth of total variable spending on police in New Jersey in table 2.

B. Judiciary

This covers the costs of courts, including judges, as well as publicly supported prosecutors and legal aid. The costs of monitoring probation and parole also come under the state judiciary budget. Drug-court financing for treatment and aftercare is allocated under the judiciary, then redirected to NJ Health and Human Services.¹⁴³

About 2.2% of the NJ population is involved in the carceral system, 3.5% if we exclude the population under eighteen and over

¹⁴² Felson & Staff, *supra* note 96, at 380.

¹⁴³ We know that the drug courts' FY 2021 budget for treatment and aftercare was \$64.1 million. N.J. LEG., FISCAL YEAR 2021 REVISED BUDGET PROPOSAL: QUESTIONS FOR THE JUDICIARY 9 (2021), https://www.njleg.state.nj.us/legislativepub/budget_2021/JUD_Response_2021.pdf. Also, the set-aside for treatment gets transferred to the Division of Health and Human Services to fund service provision. N.J. OFF. OF MGMT. & BUDGET, *supra* note 124, at D-174.

sixty-five.¹⁴⁴ Of those supervised by court appropriations, three-quarters are on probation or parole; they are not in prison.¹⁴⁵

The US Census reported NJ state and local spending on the courts (in February 2022 dollars) of \$1.79 billion.¹⁴⁶ There are several requisite corrections, as will be detailed, following Miron and Waldo, and Mellor.¹⁴⁷ First, variable costs would not include administration; fortunately, the Governor's FY 2021 Budget breaks out administration separately.¹⁴⁸ Second, only a subset of the judiciary's budget is for criminal as distinct from civil complaints. In the Governor's Budget report on actual spending, 44.2% was for criminal cases, while 26.7% was for Civil, and 29.1% for Family cases; and of this criminal-court budget, \$66 million or 34.5% was for Drug Courts.¹⁴⁹

1. State Courts

The Drug Courts are almost exclusively designed to process drug users; their budget includes treatment programs as well as operations and personnel.¹⁵⁰ The portion that is Drug Court operations and judgeships (\$26.3 million or 31.4% of total judiciary criminal expenditures) will be in large part unnecessary if drugs are decriminalized (see table 3).¹⁵¹ There will be no trials and no probation supervisions.

¹⁴⁴ Those under 18 are 21.8%, those 65 and over are 16.6% of the NJ population, see *QuickFacts: New Jersey*, U.S. CENSUS BUREAU, <https://www.census.gov/quickfacts/NJ> (last visited May 17, 2022); see *New Jersey Profile*, *supra* note 103.

¹⁴⁵ See *New Jersey Profile*, *supra* note 103 (calculated from data provided in source).

¹⁴⁶ See U.S. CENSUS BUREAU, *supra* note 116.

¹⁴⁷ MELLOR, *supra* note 5; MIRON & WALDO, *supra* note 5.

¹⁴⁸ N.J. OFF. OF MGMT. & BUDGET, *supra* note 124, at D-451.

¹⁴⁹ The numerical basis for these calculations are in *Id.* at 450-1; MIRON & WALDO, *supra* note 5, at 4 (suggesting 41.7% for criminal cases).

¹⁵⁰ N.J. OFF. OF MGMT. & BUDGET, *supra* note 124, at D-451.

¹⁵¹ Table 3 draws on Felson & Staff, *supra* note 96 for the proportion of drug crimes that fund a drug habit; DIV. OF MENTAL HEALTH, *supra* note 96, at 14

Table 3
 Direct Cost Savings from Decriminalizing Drugs: Judiciary
 Expenditures

	Current Expenditures	Excluded	Applied	Savings
<u>State Courts, Probation, Parole</u>				
Drug Court Operations and Judgeships	\$26.3 million			\$26.3 million
Judiciary Criminal Cases:				
Drug Cases	66.0 million			
Reduced expenses, drug crimes to fund drug habit			24.3%	16.0 million
Judiciary Criminal Expenditures	194.1 million			
Economic Crimes as share of cases			9.9%	19.2 million
Drug-motivated economic crimes			35.2%	6.7 million
Subtotal Drug-related Judiciary Expenses				\$49.1 million
<u>Municipal Courts</u>				
Drug-related cases	\$634.0 million		5%	31.3 million
Total Drug-related Judiciary Expenses				\$ 80.3 million

for the proportion of economic crimes that fund a drug habit; N.J. OFF. OF MGMT. & BUDGET, *supra* note 124, at D-427 for judiciary expenses by category.

The Drug Courts do not process drug cases involving manufacturing or sales, so the remaining \$127.2 million of judicial criminal costs includes those drug-supply offenses,¹⁵² as well as trials for property and violent crime. Following Mellor, and Miron and Waldo, we may allocate total judicial criminal expenses in proportion to felony convictions for drugs (34%).¹⁵³ We can again apply the Felson and Staff estimate that 27% of drug cases were motivated by drug dependence,¹⁵⁴ and our adjustment allowing 10% of their estimate to have been for possession, to include \$16 million in expenditures likely reduced by decriminalization.

¹⁵² See MIRON & WALDO, *supra* note 3, at 4 (reporting that of state and local felony cases, 34% of convictions were for drug violations). This is less than the budget for NJ possession cases.

¹⁵³ MELLOR, *supra* note 5, at 43; MIRON & WALDO, *supra* note 5, at 4 (this is evidently an understatement, since felony convictions would include cases currently handled by the drug court. Unlike California, New Jersey data does not distinguish between felony and misdemeanor cases. Nor does Oregon). See Dyke et al., *supra* note 5 (The decriminalization study in Oregon relied on a 2010 study of California); See Caulkins, *supra* note 5, at 8 (Caulkins drew on 2001 and 2006 estimates by Aos et al. of the unit cost of convictions, and the proportion of drug offenses, to establish the cost to adjudicate). See generally, STEVE AOS ET AL., WA. STATE INST. PUB. POL'Y, EVIDENCE-BASED PUBLIC POLICY OPTIONS TO REDUCE FUTURE PRISON CONSTRUCTION, CRIMINAL JUSTICE COSTS, AND CRIME RATES (2006), https://www.wsipp.wa.gov/ReportFile/952/Wsipp_Evidence-Based-Public-Policy-Options-to-Reduce-Future-Prison-Construction-Criminal-Justice-Costs-and-Crime-Rates_Full-Report.pdf; See also, STEVE AOS ET AL., WA. STATE INST. PUB. POL'Y, THE COMPARATIVE COSTS AND BENEFITS OF PROGRAMS TO REDUCE CRIME 86 (2001), https://www.wsipp.wa.gov/ReportFile/756/Wsipp_The-Comparative-Costs-and-Benefits-of-Programs-to-Reduce-Crime-v-4-0_Full-Report.pdf. The 2010 Miron and Waldo underlying data, as updated by Miron in 2018, are therefore the most recent. See MIRON, *supra* note 5.

¹⁵⁴ Felson & Staff, *supra* note 96, at 381.

A similar adjustment can be made for economic crimes, which NJ data suggest were 9.9% of all arrests.¹⁵⁵ Since 35.2% of such economic crimes have been found to be attributable to drug use,¹⁵⁶ an additional \$6.7 million can potentially be saved by decriminalizing drugs and helping the drug-dependent get treatment. Then total savings on drug-related judiciary expenses would be \$49.1 million.

2. Municipal Courts

There are 515 municipal courts in New Jersey that hear cases on low-level drug offenses as well as traffic, simple assault, public-nuisance offenses, etc.¹⁵⁷ The fines and fees they collect from defendants more than cover their expenses; in some towns, municipal fees are perceived as an income source for the town.¹⁵⁸

There do not appear to be data tracking the number of municipal-court cases associated with drug-possession charges. Even if such cases were only 5% of the docket, decriminalizing drugs could eliminate \$31.3 million in court costs,¹⁵⁹ whether borne by defendants or towns. As table 3 shows, \$80.3 million can be redirected from state and municipal judiciaries if drugs are decriminalized.

¹⁵⁵Table 69: Arrests by State, 2019, *supra* note 142.

¹⁵⁶ *Id.*

¹⁵⁷ Lilo H. Stainton, *Lawmakers Consider Local Drug Courts to Free Up Current System, Encourage Treatment*, N.J. SPOTLIGHT NEWS (Nov. 7, 2019), <https://www.njspotlight.com/2019/11/lawmakers-consider-local-drug-courts-to-free-up-current-system-encourage-treatment>.

¹⁵⁸ N.J. CTS., REPORT OF THE SUPREME COURT COMMITTEE ON MUNICIPAL COURT OPERATIONS, FINES, AND FEES 5, 21, 27 (2018), <https://www.njcourts.gov/courts/assets/supreme/reports/2018/sccmcoreport.pdf>.

¹⁵⁹ The U.S. Census Bureau reports \$575,980 in total local court expenditures, or \$634 million in February 2022 dollars. *See* U.S. CENSUS BUREAU, *supra* note 116.

C. Incarceration

Expenditures for incarceration cover twenty-one New Jersey county jails, and eleven state prisons, two youth detention facilities, thirteen Residential Community Release Program (RCRP) facilities or halfway houses, and the St. Francis Hospital Central Medical Unit.¹⁶⁰ There are also 2 federal prisons in New Jersey, but these are outside the reach of any NJ decriminalization effort, since those people were incarcerated based on federal law.¹⁶¹ City and county jails are funded by county and city budgets, state prisons by the state.¹⁶² Because of differences in the character of incarceration offenses, state and local spending will be treated separately.

¹⁶⁰ 2022/2023 Executive Board Members, NEW JERSEY COUNTY JAIL WARDENS ASS'N (2022), <http://www.njcjwa.org/jails.html>; N.J. Dep't of Corr. Facilities Map, GOOGLE, <https://www.google.com/maps/d/u/0/viewer?hl=en&ll=39.69515108986211%2C-74.57965080337796&z=7&mid=19oCJIVou1rAvf3KLu7Se3UfAJF0> (last visited May 17, 2022); N.J. DEPT. OF CORRECTIONS, INTRODUCTION 2021 (2021), https://www.state.nj.us/corrections/pdf/offender_statistics/2021/Introduction%202021.pdf

¹⁶¹ *Essex County Inmate & Jail Records (New Jersey)*, PUBRECORD, <https://www.pubrecord.org/essex-county-inmate-jail-records-new-jersey> (last visited May, 17, 2022) (data sourced from the U.S. Census Bureau, American Community Survey, 2017 ACS 5-Year Estimates, showing that in Essex County in 2017, 780 of 3058 incarcerated people (more than 25%) were being held for ICE). Overall in NJ county jails in 2018, 13% were held for ICE. See *Incarceration Trends Dataset*, *supra* note 67.

¹⁶² As for police, there are federal appropriations for state corrections expenses that filter through the state budget. See N.J. OFF. OF MGMT. & BUDGET, *supra* note 124, at C-17 to C-18.

1. State Prisons

The US Census gives NJ state corrections spending in 2019 as \$1.5 billion, or \$1.7 billion in February 2022 dollars (see table 4).¹⁶³ To eliminate overhead costs, we can take US BLS OES aggregate figures for corrections supervisor salaries relative to total employee salaries, which is 8.1%.¹⁶⁴ This leaves 91.9% or \$1.57 billion as variable costs.

¹⁶³ Table 4 is based on: U.S. CENSUS BUREAU, *supra* note 116, at 4; Felson & Staff, *supra* note 96; MIRON AND WALDOCK, *supra* note 5; N.J. DEP'T OF CORRS., *supra* note 66; DIV. OF MENTAL HEALTH, *supra* note 96; *Occupational Employment and Wage Statistics*, *supra* note 34; Table 77: *Full-Time Police Employees*, *supra* note 120.

¹⁶⁴ *Occupational Employment and Wage Statistics*, *supra* note 34.

Table 4
Direct Cost Savings from Decriminalizing Drugs: Incarceration Expenditures

	% Applied	Expenditures
NJ State Corrections Total Expenditures		\$1.7 billion
Variable costs	91.9%	\$1.6 billion
Drug convictions (primary sales/manufacturing)	13.0%	\$203.6 million
Drug supply crimes motivated by drug dependence/addiction	27%	\$ 55.0 million
NJ State Corrections Variable Costs, property-offense convictions	6.6%	\$ 104.2 million
Property crimes motivated by drug Dependence/addiction	35.8%	\$37.2 million
Subtotal, State Incarceration Expenses Linked to Drug Use		\$ 92.3 million
NJ City and County Jail Total Expenditures		\$725.9 million
Variable Costs	91.9%	\$667.0 million
Drug charges (possession and supply)	17.4%	\$116.1 million
Estimated possession charges	84.2%	\$97.8 million
Estimated supply charges	15.8%	\$18.3 million
Drug-supply crimes motivated by drug dependence/addiction	27.0%	\$ 5.0 million
Extent of economic crimes	14.1%	\$94.1 million
Economic crimes motivated by drug dependence/addiction	35.8%	\$33.7 million
Subtotal, City and County Incarceration Expenses Linked to Drug Use		\$135.9 million
Total New Jersey Incarceration Expenses Linked to Drug Use		\$228.6 million

The NJ DOC reports that 12.97% of those in state prison are there for drug-related crimes, which accounts for \$203.6 million,¹⁶⁵ and that the majority of those in prison for drug offenses are in for supplying drugs by selling or distributing, with few for manufacturing/ processing or possession. This reflects New Jersey's successful diversion of most possession cases to the Drug Courts.

Total state spending on incarcerating drug manufacturers/sellers and those convicted of economic crimes such as property crimes will include those motivated to finance their drug dependence or addiction. We can again apply figures from Felson and Staff to estimate the savings if such arrestees can access treatment and long-term recovery instead;¹⁶⁶ the results indicate that the public-health approach could reduce drug-sale cases by 27%, producing a savings of \$55 million.

The NJ DOC provided property offenses as a proportion of those incarcerated, at 6.6%.¹⁶⁷ Since the NJ DOH DMHAS¹⁶⁸ findings suggests that 35.8% of those offenses were motivated by drug dependence, drug treatment could reduce such numbers of incarcerated people and expense by \$35.2 million annually.

¹⁶⁵ N.J. DEP'T OF CORR., *supra* note 66. Moreover, “[w]omen in state prisons are more likely than men to be incarcerated for a drug or property offense. Twenty-six percent of women in prison have been convicted of a drug offense, compared to 13% of men in prison” nationwide. *Incarcerated Women and Girls*, SENT’G PROJECT (Nov. 24, 2020), <https://www.sentencingproject.org/publications/incarcerated-women-and-girls>. In New Jersey, in 2021, 25.7% of those cumulatively at the St. Francis Medical Unit, halfway houses, reentry programs, and in county jails serving state sentences are there for drug offenses. *Occupational Employment and Wage Statistics*, *supra* note 34.

¹⁶⁶ See Felson & Staff, *supra* note 96, at 380.

¹⁶⁷ N.J. DEP'T OF CORR., *supra* note 66.

¹⁶⁸ DIV. OF MENTAL HEALTH, *supra* note 96, at 13.

2. City and County Jails

The same correction for variable costs as a share of total as for state prisons indicates that local jail variable costs are \$667 million in current dollars. Recent data on the proportion of those in city or county jails for drug offenses are not readily available.¹⁶⁹ A 2013 report sponsored by the Drug Policy Alliance found that drug charges accounted for 17.4% of those in NJ county jails.¹⁷⁰ Even if drug arrests are only 13% of all arrests, it makes sense that low-level possession rates of jail incarceration would be significantly higher than for less common, higher-level cases of drug possession and supply.

Three-fourths of those in jail are awaiting trial (5,316 on Sept. 8, 2020) and may not end up being convicted.¹⁷¹ The total county-jail population after COVID releases in late March 2020 was 6,875,¹⁷²

¹⁶⁹ There are almost as many city jails as there are municipalities; they are authorized to detain accused people for up to 4 days before transfer to a county jail. For a complete list, see *List of Jails and Prisons in New Jersey*, LOCATE INMATES & CRIM. RECORDS (Nov. 4, 2021), <http://locatorinmate.com/list-of-jails-and-prisons-new-jersey/?pg=2>. In mid-2019, the total county and city jail population under supervision was 10,470, of which 9,550 were in custody and the balance under electronic monitoring, in community service, treatment programs, etcera. ZHEN ZENG & TODD D. MINTON, BUREAU OF JUST. STATS., US DEP'T OF JUST., CENSUS OF JAILS, 2005-2019 – STATISTICAL TABLES 7-8 (2021), <https://bjs.ojp.gov/sites/g/files/xyckuh236/files/media/document/cj0519st.pdf>. This figure is 46% less than in 2005 and 37% less than in 2013, *id.*, at 13, speaking to New Jersey's partial success in downsizing jail populations. However, the inmate-to-correctional-officer ratio fell from 3.8 in 2013 to 2.2 in 2019, *id.*, at 39, reflecting the inertia in downsizing jail personnel correspondingly.

¹⁷⁰ VANNOSTRAND, *supra* note 69, at 10.

¹⁷¹ N.J. LEG., *supra* note 144.

¹⁷² Blake Nelson, *N.J. County Jail Population Plunges with Inmate Releases, Fewer Arrests in Coronavirus Crisis*, N.J.COM (Apr. 15, 2020, 8:00 AM), <https://www.nj.com/coronavirus/2020/04/nj-county-jail-population-plunges-with-inmate-releases-fewer-arrests-in-coronavirus-crisis.html>.

while in 2018, there were 8,079 people in county jails, plus 2,087 held for federal prisons or marshals, and 1,525 held for ICE.¹⁷³ About half of those in jail, 47%, had not yet even been indicted¹⁷⁴ This means that despite New Jersey's reliance on drug courts, and despite New Jersey's Criminal Justice Reform, city and county jails continue to incarcerate people facing possession charges for higher-schedule drugs.

To distinguish those charged with possession from supply, we use FBI proportions for arrests in the northeast.¹⁷⁵ More than four-fifths (84.2%) of charges are for possession, with the balance (15.8%) for distribution or manufacturing. While the latter will still be illegal, table 4 again calculates that 27% share of drug-supply crimes linked to drug dependence, since the public-health approach would attenuate that.

Of all New Jersey arrests in 2019, 9.9% were for economic crimes.¹⁷⁶ Relying again on the NJ DOH MHAS study's indication that 35.8% of those offenses were motivated by drug dependence,¹⁷⁷ the costs of jail for those offenders could be reduced proportionately. The total drug-linked local incarceration expense is \$135.9 million; as indicated in table 4, total savings related to prison and jail incarceration associated with drug use would be \$228.6 million.

¹⁷³See NJ breakdown by county and prisoner category, *Incarceration Trends Dataset*, VERA INST. OF JUST. (2021), <https://github.com/vera-institute/incarceration-trends>.

¹⁷⁴ N.J. LEG., *supra* note 144 at 3.

¹⁷⁵ *Arrests for Drug Abuse Violations: Percent Distribution by Region, 2019*, *supra*, note 132.

¹⁷⁶ *Table 77: Full-Time Police Employees*, *supra* note 120.

¹⁷⁷ DIV. OF MENTAL HEALTH, *supra* note 96, at 13.

V. POTENTIAL SAVINGS FROM DECRIMINALIZATION: COSTS OF HEALTH CASUALTIES OF THE DRUG WAR

The focus on criminalizing drug use instead of getting those with a drug problem access to the requisite mental and physical healthcare has imposed additional medical costs, both as a matter of human suffering, and as expense borne by the public. This section explores the monetary costs of treating overdoses, intravenous-drug linked diseases like HIV and hepatitis-C, and neonatal care necessitated by a child born of a mother addicted to opioids.

A. Drug Overdose

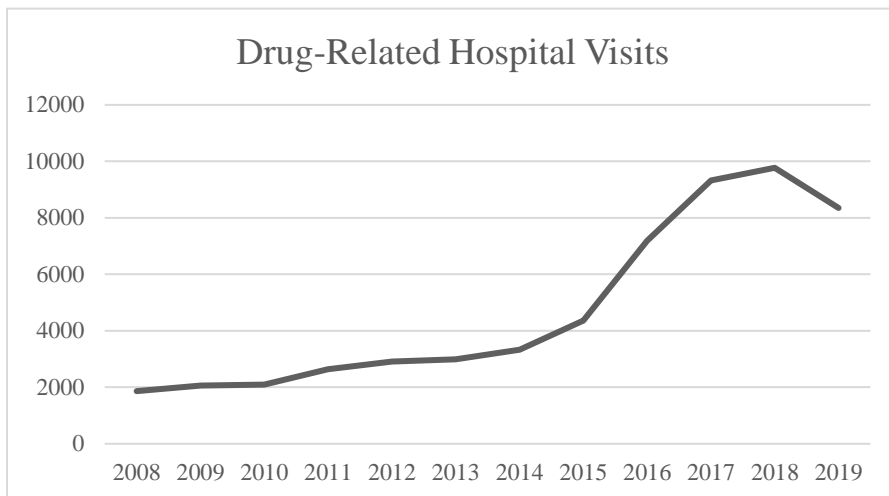
Figure 7 provides NJ drug-related hospital visits since 2008. Of those, more than 50% of the expense is paid for by the public sector, federal and state.¹⁷⁸ LaPointe observed that while an emergency-room visit was about \$504 per patient in 2017, the cost per admitted patient was \$11,700, and rose to \$20,500 for those requiring intensive care.¹⁷⁹ This means that care for those suffering from an overdose cost \$75.6 million dollars in New Jersey in current dollars, of which \$40.1 million was borne by the public sector (see table 5).¹⁸⁰

¹⁷⁸ *Drug-Related Hospital Visits*, N.J. DEP'T OF HEALTH, https://www.state.nj.us/health/populationhealth/opioid/opioid_hospital.shtml (last visited May 17, 2022). Data in figure 7 are also from this source.

¹⁷⁹ Jacqueline Lapointe, *Opioid Overdose Care Totals \$1.94B in Annual Hospital Costs*, REVCYCLE INTEL. (Jan. 7, 2019), <https://revcycleintelligence.com/news/opioid-overdose-care-totals-1.94b-in-annual-hospital-costs>.

¹⁸⁰ *HIV Surveillance Report*, CTRS. FOR DISEASE CONTROL & PREVENTION 1 (2019), <https://www.cdc.gov/hiv/statistics/overview/index.html>; *HIV Cost-Effectiveness*, CTRS. FOR DISEASE CONTROL & PREVENTION (Oct. 1, 2021), <https://www.cdc.gov/hiv/programresources/guidance/costeffectiveness/index.html>; *Birth and Natality*, CTRS. FOR DISEASE CONTROL & PREVENTION, <https://www.cdc.gov/nchs/fastats/births.htm> (last reviewed Feb 16, 2022); *Opioid Overdose Deaths and Opioid Overdose Deaths as a Percent of All Drug Overdose Deaths*, *supra* note 92; Lapointe, *supra* note 180; *New*

Figure 7



Jersey: Opioid-Involved Deaths and Related Harms, NAT'L INST. ON DRUG ABUSE (2020, 2022), <https://www.drugabuse.gov/drug-topics/opioids/opioid-summaries-by-state/new-jersey-opioid-involved-deaths-related-harms>; *Viral Hepatitis, NJ Overdose Data Dashboard*, N.J. DEP'T OF HEALTH https://www.state.nj.us/health/populationhealth/opioid/viral_hep.shtml. (last visited Apr. 26, 2022); *Query Results for New Jersey Birth Data: 1990-2019*, N.J. DEP'T OF HEALTH (2021); *New Jersey State Health Assessment Data, Health Indicator Report of New HIV/AIDS Diagnoses*, N.J. DEP'T OF HEALTH: N.J. STATE HEALTH ASSESSMENT DATA (May 4, 2022), <https://www-doh.state.nj.us/doh-shad/indicator/view/HIVIncidence.YearTransmission.html>. <https://www-doh.state.nj.us/doh-shad/query/result/birth/BirthBirthCnty/Count.html>; Anil G. Suryaprasad et al., *Emerging Epidemic of Hepatitis C Virus Infections Among Young Nonurban Persons Who Inject Drugs in the United States, 2006-2012*, 59 CLINICAL INFECTIOUS DISEASES 1411 (2014), <https://academic.oup.com/cid/article/59/10/1411/2895604>; *Consumer Price Index for All Urban Consumers: All Items in U.S. City Average*, *supra* note 116; Univ. of Wash. Hepatitis C Training Ctr., *HCV Epidemiology in the United States*, HEPATITIS C ONLINE (2021), <https://www.hepatitisc.uw.edu/pdf/screening-diagnosis/epidemiology-us/core-concept/all>.

Table 5
Costs of Health Casualties of the Drug War

	Total	Public Spending
Overdose care:		
Emergency room, hospitalization, intensive care	\$75.6 million	\$40.1 million
HIV from intravenous-drug use 2019 cases, annual cost	\$48.5 million	\$25.7 million
Hepatitis-C linked to intravenous-drug use	\$69.4million	
NAS-NOWS infants: medication, neonatal ICU	<u>\$1.7 million</u>	
Total Expense for Casualties of the Drug War	\$195.1 million	

B. HIV

Intravenous drug use (IDU) is often associated with people sharing needles, and consequent high risk of transmitting both HIV and Hepatitis-C,¹⁸¹ leading to chronic health-care needs. For the 79 people in NJ who contracted IDU-linked HIV in 2019, the total lifetime cost of their care is estimated to be \$41.1 million.¹⁸² The CDC suggests that HIV is under-diagnosed, with actual numbers 15.4% higher than reported.¹⁸³ Then lifetime cost of care in New Jersey would be \$46.9 million (as shown in table 5). Nationally, KFF [Kaiser Family Foundation] reports that of those with HIV, 42% are covered by

¹⁸¹ Press Release, N.J. Dep't of Health, New Jersey Department of Health Recognizes World Hepatitis Day (July 28, 2021), <https://www.nj.gov/health/news/2021/approved/20210728a.shtml>. NJ jails and prisons are not required to test inmates for hepatitis-C, even though the CDC estimates that as many as one-third have contracted the disease, many in prison. Early treatment is cost-effective and saves lives; those untreated face chronic liver disease. Star-Ledger Ed. Bd., *Talk About Corrections: NJ's Prisons Do Not Have Universal Testing for Hepatitis*, NJ.COM (Jan. 2, 2020, 6:45 AM), <https://www.nj.com/opinion/2020/01/talk-about-corrections-njs-prisons-do-not-have-universal-testing-for-hepatitis-editorial.html>.

¹⁸²In New Jersey, 79 of 1153 or 6.85% of HIV cases in 2019 were IDU-transmitted; proportion calculated from IDU-transmitted cases in table entitled: New HIV Diagnoses ... By Transmission Category, in *New Jersey State Health Assessment Data, Health Indicator Report of New HIV/AIDS Diagnoses*, *supra* note 181, and from table entitled, New HIV/AIDS Diagnoses by Year..., in New Jersey Dept. of Health, *id.* The lifetime cost of HIV care in New Jersey was estimated as \$460 million for 1,252 cases in 2009, or \$367,412 per case, \$516,475 in Feb. 2022 dollars; see table 1, NJ data, in CDC, *HIV Cost-Effectiveness*, *supra* note 181. The lifetime cost times the number of IDU-linked cases gives \$40.8 million.

¹⁸³ *HIV Surveillance Report*, *supra* note 181, at 1 (citing undiagnosed cases as 158,500 and diagnosed as (1,189,700-158,500) = 1,031,200).

Medicaid.¹⁸⁴ Another 11% are uninsured,¹⁸⁵ which in New Jersey generates costs for the state to cover charity care provided by hospitals. Using these figures to approximate associated spending coverage, public spending on IDU-linked HIV would be \$24.9million.

In Portugal, decriminalization, coupled with a national health service, brought new IDU HIV infections down from 1575 in 2000 to 78 in 2013 a 95% decline.¹⁸⁶ While Portugal's rate of infection was initially much higher than New Jersey's in 2019,¹⁸⁷ this nevertheless holds out hope that decriminalization may substantially attenuate New Jersey's HIV infection rate.

¹⁸⁴ *Medicaid and HIV*, KAISER FAM. FOUND. (Oct. 1, 2019), <https://www.kff.org/hiv/aids/fact-sheet/medicaid-and-hiv> [<https://web.archive.org/web/20220315062350/https://www.kff.org/hiv/aids/fact-sheet/medicaid-and-hiv/>].

¹⁸⁵ *Id.* at 2.

¹⁸⁶ DRUG POL'Y ALL., DRUG DECRIMINALIZATION IN PORTUGAL: A HEALTH-CENTERED APPROACH 2 (2015), https://drugpolicy.org/sites/default/files/DPA_Fact_Sheet_Portugal_Decriminalization_Feb2015.pdf.

¹⁸⁷ Portugal's population was then 10.43 million, suggesting the rate of infection of infection declined to 7.54 per million. The IDU HIV infection rate in NJ is 79 in a population of 8.9 million, which is 18 percent higher than Portugal's ultimate incidence. *See id.*; *see also* EUR. MONITORING CTR. FOR DRUGS & DRUG ADDICTION, PORTUGAL COUNTRY DRUG REPORT 1 (2019) https://www.emcdda.europa.eu/system/files/publications/11331/portugal-cdr-2019_0.pdf; *Resident Population Estimates*, INSTITUTO NACIONAL DE ESTATISTICA (June 16, 2014), https://www.ine.pt/xportal/xmain?xpid=INE&xpgid=ine_destaques&DESTAQUESdest_boui=211394659&DESTAQUESmodo=2.

C. Hepatitis-C

A 2014 study sampled new Hepatitis-C cases in the United States identified by the CDC in 2011-2012.¹⁸⁸ They found that 77% had ever used injection drugs, 40% over the past 6 months.¹⁸⁹ In 2019, there were 103 new or acute cases of Hepatitis-C infection reported in New Jersey.¹⁹⁰ The CDC recognizes that most cases are not reported and ascribes a factor of 13.9 actual new acute cases for every new reported case.¹⁹¹ This means the CDC projects 1432 actual acute NJ cases for 2019. NJ DOH also reported 6,394 chronic cases in 2019, which similarly may be an underestimate.¹⁹²

New medications make Hepatitis-C treatment initiated early more viable than before, although still expensive: \$26,400 - \$52,800 per patient, depending on the necessary length of treatment with glecaprevir-pibrentasvir.¹⁹³ Failure to deliver these treatments to those suffering from the disease end up costing about twice as much over a person's life.¹⁹⁴ This implies total intervention costs for hepatitis-C of

¹⁸⁸ Suryaprasad et al., *supra* note 181, at 1414.

¹⁸⁹ *Id.* at 1416.

¹⁹⁰ *Viral Hepatitis, NJ Overdose Data Dashboard, supra* note 181.

¹⁹¹ *HCV Epidemiology in the United States, supra* note 181, at 21.

¹⁹² The 2020 figures were higher: 121 acute cases and 5,409 chronic cases of hepatitis-C. *Viral Hepatitis, NJ Overdose Data Dashboard, supra* note 181. Because of the distortions brought on by the COVID-19 pandemic, this study limits itself to 2019 data.

¹⁹³ An 8-week to 16-week course of treatment is recommended. See *Glecaprevir-Pibrentasvir (Mavyret)*, HEPATITIS C ONLINE (2022), [https://www.hepatitisc.uw.edu/page/treatment/drugs/glecaprevir-pibrentasvir#:~:text=The%208%2Dweek%20course%20of,\(Child%2DPugh%20A\)](https://www.hepatitisc.uw.edu/page/treatment/drugs/glecaprevir-pibrentasvir#:~:text=The%208%2Dweek%20course%20of,(Child%2DPugh%20A).). Eight weeks of the medication costs \$26,400. See Moosa Tatar et al., *Cost-Effectiveness of Universal and Targeted Hepatitis C Virus Screening in the United States*, JAMA NETWORK OPEN, Sept. 2020, at 6, <https://jamanetwork.com/journals/jamanetworkopen/fullarticle/2770156>.

¹⁹⁴ Homie Razavi et al., *Chronic Hepatitis C Virus (HCV) Disease Burden and Cost in the United States*, 57 HEPATOLOGY 2164, 2167 (2013) (reporting a lifetime cost in 2011 of \$64,490, which translates to \$80,656 in February

\$41,900 (the average) * 103 reported cases, + 2*\$41,900 * (1432-103) unreported cases = \$115.6 million; of this, 60%¹⁹⁵ or \$69.4 million derives from IDU (see table 2).¹⁹⁶ No data on public vs. private coverage for this condition were available; however, half of hepatitis-C patients who are privately insured are denied coverage,¹⁹⁷ which means their healthcare costs would track the higher number.

Delaying treatment is expensive as well as harmful: it can lead to cirrhosis of the liver, liver cancer, and repeated hospitalizations.¹⁹⁸ Coupled with the increased incidence in suburban opioid users and associated IDU-transmitted hepatitis-C, this recognition has already started to move NJ to change policy. In 2019 the state budgeted for replacing the traditional punitive approach – Medicaid treatment only permitted once the person has experienced liver damage – with a preventative public-health approach costing more than \$10 million in Medicaid prescription coverage in state and federal funding.¹⁹⁹ If we

2022 dollars).

¹⁹⁵ See *HCV Epidemiology in the United States*, *supra* note 133 for raw data.

¹⁹⁶ See sources cited *supra* note 92 for raw data related to table 2. Lifetime costs of cases identified this year are spread out over the future. But people infected in previous years who are still alive require healthcare this year. Assuming healthcare costs are evenly spread across the lifespan, and that incidence and expected lifespan do not change appreciably year-to-year, the lifetime costs for one year is a good approximation of this year's cost savings from decriminalization and attenuating IDU-HIV.

¹⁹⁷ News Release, Perelman Sch. of Med., Univ. of Pa., Half of Hepatitis C Patients with Private Insurance Denied Life-Saving Drugs (June 7, 2018), <https://www.pennmedicine.org/news/news-releases/2018/june/half-of-hepatitis-c-patients-with-private-insurance-denied-life-saving-drugs>.

¹⁹⁸ Tatar et al., *supra* note 194, at 1; Ponni V. Perumalswami & Thomas D. Schiano, *The Management of Hospitalized Patients with Cirrhosis: The Mount Sinai Experience and a Guide for Hospitalists*, 56 DIGESTIVE DISEASES AND SCIENCES, 1266 (2011), <https://pubmed.ncbi.nlm.nih.gov/21416246/>.

¹⁹⁹ Press Release, N.J. Dep't of Hum. Servs., Fiscal Year 2019 Budget Expands Vital Hepatitis C Treatments for Medicaid Enrollees (July 10,

ascribe 75% of these expenditures to IDU, following Suryaprasad et al.,²⁰⁰ that alone is more than \$7.5 million, but a much lower figure than our estimate, in keeping with budgeting for reported cases only.

D. NAS/NOWS

A further consequence of the opioid epidemic is increased cases with neonatal conditions known as NAS/NOWS (Neonatal abstinence syndrome/neonatal opioid withdrawal syndrome).²⁰¹ Using data from the National Institute for Drug Abuse (NIDA) and NJ DOH gives an estimate of 665 such cases.²⁰² Such infants may require medication and time in neonatal ICU, an expensive prospect.²⁰³ NIDA reports that nationally, the associated hospital costs totaled \$572.7 million, or \$655 million in current dollars,²⁰⁴ which would translate to \$1.69 million for NJ cases (see table 5).

2018),

<https://www.state.nj.us/humanservices/news/press/2018/approved/20180710.html>.

²⁰⁰ Suryaprasad et al., *supra* note 181.

²⁰¹ *New Jersey: Opioid-Involved Deaths and Related Harms*, *supra* note 181.

²⁰² In New Jersey, .67% of all hospital births are NAS/NOWS cases. *Id.* In 2019, NJ had 99,305 births. *Query Results for New Jersey Birth Data: 1990-2019*, *supra* note 181. That translates to 665 NAS/NOWS cases in New Jersey.

²⁰³ Andrea E. Strahan et al., *Neonatal Abstinence Syndrome Incidence and Health Care Costs in the United States, 2016*, 174 JAMA PEDIATRICS 201 (2020), <https://jamanetwork.com/journals/jamapediatrics/fullarticle/2756325>.

²⁰⁴ *New Jersey: Opioid-Involved Deaths and Related Harms*, *supra* note 181.

E. Summary

It is well-established that drug dependence and addiction can have physical residuals.²⁰⁵ A recent study by Park and Powell found evidence that increased recourse to illegal markets for opioid consumption was associated with increased rates of application for long-term disability (SSI).²⁰⁶ The costs of these health consequences of prior drug addiction should also be measurable and included in this assessment, but the requisite data to support such estimates are not available. Thus, the cost estimate here is an understatement.

In all, the cost of the collateral health damage from the Drug War is at least \$195.1 million, as detailed in table 5,²⁰⁷ including all estimated healthcare costs, not just costs borne by the public sector. Using the inclusive number is warranted because no effort was made to impute the economic losses from disability and deaths associated with these health casualties, which are even larger numbers.²⁰⁸ Addiction can contribute to chronic health issues requiring treatment not included here (e.g., skin lesions, stress on the heart, kidney damage), and overdoses are associated with first responder resources, including police, emergency room visits and, in some cases, intensive-care stays.²⁰⁹ Even

²⁰⁵ JOHN W. SPENCER & JOHN J. BOREN, NAT'L INST. ON DRUG ABUSE, RESIDUAL EFFECTS OF ABUSED DRUGS ON BEHAVIOR 7 (1990), <https://searchworks.stanford.edu/view/10865807>.

²⁰⁶ Sujeong Park & David Powell, *Is the Rise in Illicit Opioids Affecting Labor Supply and Disability Claiming Rates?*, J. HEALTH ECON., Jan. 22, 2021, at 3.

²⁰⁷ *Infra* Table 5.

²⁰⁸ See, e.g., U.S. COUNCIL OF ECON. ADVISORS, THE UNDERESTIMATED COST OF THE OPIOID CRISIS 1 (2017).

²⁰⁹ *Effects of Drug Use & Alcohol on Your Skin*, AMERICAN ADDICTION CTRS. (2022), <https://americanaddictioncenters.org/health-complications-addiction/drugs-skin>; *Understanding the Epidemic*, CTRS. FOR DISEASE CONTROL & PREVENTION (2021), <https://www.cdc.gov/drugoverdose/epidemic/index.html>; Press Release, Premier, Inc., Opioid Overdoses Costing U.S. Hospitals an Estimated \$11 Billion Annually (Jan. 3, 2019),

incarceration has been shown to have widespread traumatizing effects on those imprisoned.²¹⁰ A move to decriminalize drugs and promote a public-health approach would dramatically reduce all of these health consequences.

VI. SUMMARY AND DISCUSSION: TOTAL SAVINGS FROM DECRIMINALIZING DRUGS

Combined, these data indicate that total savings from decriminalizing drugs would be more than \$1.0 billion annually, including savings from the health casualties of the Drug War (see table 6). The predicted savings as a share of total expenditures on the prison-industrial complex is 13.5% of money spent for police, 4.5% for the judiciary, and 8.4% for jails and prisons. That is, 10.1% of the \$8.2 billion currently incurred for police, judiciary, and incarceration²¹¹ are triggered by drug consumption (i.e., \$824.3 million) and would no longer be spent. This money represents potential resources to reallocate to healing, and to the social capital and people of cities whose populations were direct and collateral casualties of the Drug War.

<https://www.premierinc.com/newsroom/press-releases/opioid-overdoses-costing-u-s-hospitals-an-estimated-11-billion-annually>; Corey S. Davis et al., *Engaging Law Enforcement in Overdose Reversal Initiatives: Authorization and Liability for Naloxone Administration*, 105 AM. J. PUBLIC HEALTH 1530 (2015),

[https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4504282/#:~:text=Law%20enforcement%20officers%20\(LEOs\)%20are,24%20states%20now%20carry%20naloxone.](https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4504282/#:~:text=Law%20enforcement%20officers%20(LEOs)%20are,24%20states%20now%20carry%20naloxone.)

²¹⁰Alicia Piper & David Berle, *The Association Between Trauma Experienced During Incarceration and PTSD Outcomes: A Systematic Review and Meta-Analysis*, 30 J. FORENSIC PSYCHIATRY & PSYCH. 854, 856 (2019).

²¹¹ U.S. CENSUS BUREAU, *supra* note 116 (cost data updated to February 2022 dollars).

Table 6

Summary: Cost Savings from Decriminalizing Drugs in New Jersey

Policing Expenses linked to Drug Use (table 2)	\$537.9 million
Judiciary Expenses linked to Drug Use (table 3)	\$ 80.3 million
Prison and Jail Incarceration Expenses linked to Drug Use (table 4)	\$228.6 million
Health Casualties of the Drug War Expenses (table 5)	<u>\$195.1 million</u>
Total Estimated Savings from Decriminalizing Drugs	\$1,041.9 million

Is this estimate low or high? Several factors suggest this is a low estimate. First, we have limited ourselves to variable costs. But such a reduction in jail and prison expenses would arguably lead to further prison and jail closures, saving overhead costs we have excluded. In 2019, \$33.65 million (2019 dollars) was spent in the state for capital outlay on the prisons;²¹² this figure is excluded here from operating costs. Success in downsizing the prison population through decriminalization should permit fewer jails and reduce such expenses, rendering the figures presented here underestimates. For instance, recently Union County, whose jail population has fallen from 1,000 to 345 since 2011, decided to close the bulk of the county jail and pay for those remaining to be housed in Essex County jail.²¹³ This allowed them to terminate 190 jobs and the expense of maintaining and running all but a small part of the facility, saving about \$20 million annually.²¹⁴

²¹² U.S. CENSUS BUREAU, *supra* note 116.

²¹³ Noah Cohen, *NJ County to Close Most of its Jail, Send Inmates to Nearby Facility*, NJ.COM (Apr. 22, 2021, 9:28 PM), <https://www.nj.com/news/2021/04/nj-county-to-close-most-of-its-jail-send-prisoners-to-nearby-facility.html>.

²¹⁴ *Id.*

The pressure to close jails has already increased since the state prohibited contracts to house ICE detainees in August 2021,²¹⁵ which in 2018 accounted for 13% of the NJ jail population.²¹⁶

Second, both municipalities and the state of New Jersey have unfunded actuarial liabilities for their pension funds. The Police and Firemen's Retirement System was owed \$638.2 million in FY 2020;²¹⁷ the other 6 state pension funds, including the State Police Retirement System and Prison Officers' Pension Fund, have similar shortfalls.²¹⁸ New Jersey has insufficiently funded health benefits and retirement funds for some time and is trying to catch up.²¹⁹ The state allocations needed to restore the funds' viability are not captured in our data. Fewer

²¹⁵ Jordan Levy, *Why ICE is Leaving New Jersey County Jails*, THE NEW REPUBLIC: SOLD/SHORT (Aug. 27, 2021), <https://newrepublic.com/article/163447/phil-murphy-bans-ice-new-jersey-county-jails>.

²¹⁶ *Incarceration Trends Dataset*, *supra* note 174 (for raw data related to this figure).

²¹⁷ DIV. OF PENSIONS & BENEFITS, *supra* note 125 (total unfunded actuarial liability for NJ municipalities, bottom line of table of 2020 PERS employer billing from).

²¹⁸ Samantha Marcus, *N.J.'s Public Worker Pension Shortfall Got Even Bigger Last Year. Here's Why.*, NJ.COM (May 14, 2021, 12:38 PM), <https://www.nj.com/politics/2021/05/njs-public-worker-pension-shortfall-got-even-bigger-last-year-heres-why.html>; DIV. OF PENSION & BENEFITS, N.J. DEP'T OF TREASURY, COMPREHENSIVE ANNUAL FINANCIAL REPORT FOR THE FISCAL YEAR ENDED JUNE 30, 2020, at 154, 179, 206, 229, 258, 268 (2021).

²¹⁹ Samantha Marcus, *How Did N.J. Get into This Pension Mess?*, NJ.COM (Jan. 19, 2015, 10:00AM), https://www.nj.com/politics/2015/01/how_did_nj_get_into_this_pension_mess.html; Samantha Marcus, *NJ Police Officers, Firefighters Can Retire Early Under Bill Signed by Murphy*, NJ.COM (Apr. 19, 2021, 4:36PM), <https://www.nj.com/politics/2021/04/nj-police-officers-firefighters-can-retire-early-under-bill-signed-by-murphy.html>.

state police would mean fewer retirements and demands on the health-care system down the road, reducing such contributions by the state.

Third, New Jersey identifies the reason for an arrest by the most serious charge.²²⁰ Eyeballing examples from Hunterdon County, many people were charged with robbery or gun possession, and then also with possessing drug paraphernalia or drugs.²²¹ Assuming the charge listed first is identified as the primary reason for arrest, such cases are not picked up as drug-use cases. The question remains whether the police would have searched a person or car if not for signs of drug possession or other Drug War-related motivation.

Fourth, many municipal-police contracts stipulate cash payments at retirement for unused sick leave.²²² Our estimate does not pick up that liability since it is not a current expense, yet downsizing police forces will mean saving on such payouts as well.

Fifth, our results may be understated since extensive incarceration has been shown to so undermine family systems and community structures that the result is less rather than more social order.²²³ As a former NJ county prosecutor who worked in a drug court observed, “There’s a very strong body of evidence that suggests that the criminalization of drugs has created far greater crime than it was intended to address,” Barlyn said, noting it was Prohibition that entrenched organized crime in this country. “The argument is . . . the cure is turning out to be worse than the disease.”²²⁴ By decriminalizing

²²⁰ N.J. DEP’T OF CORRS., *supra* note 66.

²²¹ The charge description does not always list drug possession as the first offense. See, e.g., *Division of Corrections: Inmate Population Report as of February 25, 2022 – 32 Total Inmates*, HUNTERDON CNTY., N.J.: OFF. OF THE SHERIFF, <https://www.co.hunterdon.nj.us/sheriff/Corrections/inmates.html> (last visited May 17, 2022).

²²² Andrew Ford et al., *How the Police Bank Millions Through Their Union Contracts*, PROPUBLICA (Feb. 8, 2021, 5:00 AM), <https://www.propublica.org/article/new-jersey-police-contracts>.

²²³ Rose & Clear, *supra* note 27, at 441.

²²⁴ Chesler, *supra* note 39 (quoting Bennett Barlyn).

drug use and providing extensive treatment opportunities and reparations, we give communities an opportunity to heal, families can live together unimpeded by arrest, drug users can access federal funds for further education, and there can be investment in local business and housing etc. In particular, the Black communities that were particularly targeted by the Drug War require restitution - investment to help restore their economic and social well-being.²²⁵

There might be concern that our estimates are overstated because they do include cannabis arrests, prosecution and incarceration, despite New Jersey's legalization of its use and supply in February 2021.²²⁶ First, it will take time for the state to adjust to this new world; towns may still decide to permit cannabis supply location, having initially opted out.²²⁷ Second, as Jeffrey Miron reported, states that legalized marijuana have experienced a slight increase in expenditures on the Drug War over several years, not a decline.²²⁸ "Despite the sharp

²²⁵ Charles Boyer, *Opinion, New Jersey has More to Do to End the War on Drugs*, NJ.COM, (Feb. 25, 2021 3:45 PM), <https://www.nj.com/opinion/2021/02/new-jersey-has-more-to-do-to-end-the-war-on-drugs-opinion.html>; *A Vision to End Mass Incarceration in New Jersey*, AM. CIV. LIBERTIES UNION N.J. (Dec. 2017), <https://www.aclu-nj.org/en/publications/vision-end-mass-incarceration-new-jersey>; Nikita Biryukov, *New Coalition Looking to End the War on Drugs*, N.J. GLOBE (Feb. 2, 2021), <https://newjerseyglobe.com/section-2/new-coalition-looking-to-end-the-war-on-drugs/>; Press Release, Judith M. Persichilli, Comm'r, N.J. Dep't of Health, Governor Murphy Signs Legislative Package to Expand Harm Reduction Efforts, Further Commitment to End New Jersey's Opioid Epidemic (Jan. 18, 2022), <https://www.nj.gov/health/news/2022/approved/20220118a.shtml> (see comment by Caitlin O'Neill).

²²⁶ N.J. STAT. ANN. § 24:6I-31 (West 2021).

²²⁷ Austin, Ahmad, *Is Your South Jersey Town Allowing Canabis Sales? Find out here*, BURLINGTON CNTY. TIMES (Jan. 27, 2022), <https://www.burlingtoncountytimes.com/story/news/2022/01/27/heres-where-cannabis-businesses-can-operate-south-jersey/6593803001/>.

²²⁸ MIRON, *supra* note 5, at 7-8.

decline in marijuana arrests, criminal justice expenditures in Colorado, Oregon, and Washington have risen slightly.”²²⁹ He observes that cannabis expenses were only 15% of all drug-war expenditures, while acknowledging that states may simply protect the resources designated for the Drug War, rather than reallocating savings elsewhere.²³⁰ Miron’s findings point to the need for systematic education, as well as legislation to achieve the policy-stance redirection from punishment and vindictiveness to a public-health approach for drug dependence and addiction. There have to be programmatic efforts to raise awareness of the destructive nature of the Drug War and the need to reinvest in devastated communities. And, the state has to be willing to cut allocations to “law and public safety” that are simply funding redundant police, court employees, parole officers, and prison guards.

Our estimates of cost savings are in the vicinity of the recent NJ Policy Perspectives study by Jenna Mellor, who found New Jersey averaged \$1.16 billion annually over the last decade on the Drug War, or \$1.38 billion in current dollars.²³¹ To parse the differences, Mellor includes public spending on both supply of and demand for drugs²³², while this study focuses solely on drug use; she also estimates a smaller overhead proportion for police. On the other hand, she limits her study to drug crimes, and does not include economic crimes to finance drug dependence and addiction.²³³ Nor does she include the health expenses for casualties of the drug war²³⁴, which is 19.2% of our total. As a rough proxy, if we apply Miron and Waldock’s proportions for police budgets, whereby 71.1% is for possession,²³⁵ then that proportion of Mellor’s

²²⁹ *Id.* at 7.

²³⁰ *Id.*

²³¹ This divides Mellor’s 10-year estimate of \$11.6 billion (2020\$) by 10, and converts to Feb. 2022 dollars. See MELLOR, *supra* note 5, at 35.

²³² See generally *id.*

²³³ See generally *id.*

²³⁴ See generally *id.*

²³⁵ MIRON & WALDOCK, *supra* note 5, at 4. MELLOR, *supra* note 5, at 59 (stating that she replicates the Miron and Waldock study).

estimate would be \$977.8 million, in February 2022 dollars. Our estimated savings on police, judiciary and incarceration is \$846.7 million, so ours is within 13% of her implicit drug-consumption estimate, based on her 10-year spending average.²³⁶ Our total estimate is 7% higher than her possession estimate because it includes the expense of health casualties of the Drug War.

One further caveat to our numbers on savings from decriminalization: while the budgets for the state police, the state judiciary, and the state prisons are set at the state legislative level, the budgets for local police, municipal courts, and county and city jails are set by the executives, town councils, and boards of freeholders of 21 counties and 565 municipalities.²³⁷ Moreover, towns that try to limit police budgets often face a state-level union or police brotherhood in collective bargaining,²³⁸ and are at a disadvantage in negotiations because of their relatively small size.²³⁹

To achieve the savings from decriminalizing drugs necessary to finance the public-health strategy may require moving to state-level negotiations on behalf of municipalities vis-à-vis their police force's union. Economists refer to this negotiation between two collectives as bilateral monopoly: one agent represents the police - their union;

²³⁶ Unlike for her police estimates, MELLOR, *supra* note 5, is not clear how she controls for overhead expenditures in the judiciary or the prison budgets. She used 47% of total judicial expenses as relevant for criminal cases and treated 34% of those or 16% of the total as drug-war related. *Id.* at 29. We found that total judicial expenses associated with drug courts were 27.7% of total judicial and drug-court expenses, which total also includes civil and family courts, probation services, and trial-court and administrative services. Mellor's figure for the corrections operating budget makes no mention of controlling for overhead costs, but we excluded 8.1% of those budgets, based on the ratio of aggregate salaries of corrections overhead employees to those of non-supervisory employees.

²³⁷ See *infra* notes 115 and 116 and accompanying text.

²³⁸ See, e.g., Ford et al., *supra* note 223.

²³⁹ Benjamin Levin, *What's Wrong with Police Unions?*, 120 COLUMBIA L. REV. 1333, 1369 n. 199 (2020).

another agent represents all the municipal employers of police.²⁴⁰ The latter role could be filled by the state, or by the NJ state league of municipalities, which is authorized by the state to serve local towns.²⁴¹

Furthermore, it is often budget crises that fuel efforts to downsize law-enforcement expenditures.²⁴² A study by McCabe found that police density (per capita) varied widely: density was thirteen times as high in the highest as in the lowest of sixty-one towns surveyed.²⁴³ He suggested that police staffing practices often follow administrative rules like “crime trends, a per-capita approach, minimum-[staff]ing levels, authorized/ budgeted levels,” rather than the actual demands of the work.²⁴⁴ He contrasted these with a workload model, which would permit a reduction in force size.²⁴⁵ The implication is that financial pressure may be a necessary adjunct of decriminalization if police forces are to shrink.

One strategy might be for the state of New Jersey to tax excess police budgets, relative to baseline benchmarks. The state could also limit budget allocations to municipal police where they have not downsized despite decriminalization. This would provide an additional incentive for communities to trim redundant police employees, since they have to pay or forego the equivalent from the state for what are, given decriminalization, extra employees. It would also permit the state to capture the means necessary to fund the new public-health initiatives necessary to help people heal from addiction and help communities heal

²⁴⁰ A. J. Bowley, *Notes and Memoranda, Bilateral Monopoly*, 38 ECON. J. 651, 659 (1928).

²⁴¹ *About Us*, N.J. LEAGUE OF MUNS., <https://www.njlm.org/27/About-Us>.

²⁴² E.g., Caren Chesler, *New Jersey’s Drug Court Program: Making the Sentence Fit the Crime*, N.J. SPOTLIGHT NEWS (Oct. 22, 2013), <https://www.njspotlight.com/2013/10/13-10-22-new-jersey-s-drug-court-program-making-the-sentence-fit-the-crime/> (“some say initiatives at both the state and federal levels to treat rather than incarcerate drug offenders is more about budgets than benevolence.”).

²⁴³ MCCABE, *supra* note 119, at 9.

²⁴⁴ *Id.* at 5.

²⁴⁵ *Id.* at 5.

from the ravages of the Drug War, as well as providing some training opportunities for those permanently laid off.

VII. CONCLUSION

The New Jersey initiative to decriminalize drugs has been shown to be financially fruitful, releasing more than a billion dollars annually to repair the damage from the Drug War and develop mechanisms to help those dependent or addicted to heal. Besides Oregon, which decriminalized all drugs in 2020, several states (California, New York, Virginia, Washington) and locales (Ann Arbor, Denver, New York, Oakland, Santa Cruz, Washington DC) are taking steps towards decriminalization, including district attorneys not prosecuting drug possession of small amounts (Philadelphia, Baltimore, New Orleans), and considering or providing safe injection sites (New York City, Philadelphia, Rhode Island, San Francisco).²⁴⁶ And eighteen states have

²⁴⁶ Scott Akins & Clayton Mosher, *Oregon Just Decriminalized All Drugs – Here’s Why Voters Passed this Groundbreaking Reform*, U.S. NEWS & WORLD REP. (Dec. 10, 2020, 11:07 AM), <https://www.usnews.com/news/best-states/articles/2020-12-10/oregon-just-decriminalized-all-drugs-heres-why-voters-passed-this-groundbreaking-reform>; Ben Adlin, *New York, Virginia and Other States Consider New Drug Decriminalization Bills*, MARIJUANA MOMENT (Jan. 13, 2021), <https://www.marijuanamoment.net/new-york-virginia-and-other-states-consider-new-drug-decriminalization-bills/>; Matt Sledge, *New Orleans DA Quits Prosecuting Most Small Drug Charges ‘for Now’*, NOLA.COM (Apr. 13, 2021), https://www.nola.com/news/courts/article_e5576958-9cae-11eb-940e-979ec1dda360.html; Samantha Melamed & Julia Terruso, *Philly Elected Larry Krasner District Attorney to Reform the System. Here’s What He Did*, PHILA. INQUIRER (May 14, 2021), <https://www.inquirer.com/politics/philadelphia-district-attorney-da-larry-krasner-first-term-election-20210514.html>; See Saba Rouhani et al., *Baltimore’s No-Prosecution Policy for Low-Level Drug Possession and Prostitution Finds Almost No Rearrests for Serious Offenses*, JOHNS HOPKINS BLOOMBERG SCHL. OF PUB. HEALTH, (Oct. 19, 2021),

already legalized marijuana (Alaska, Arizona, California, Colorado, Connecticut, Illinois, Maine, Massachusetts, Michigan, Montana, Nevada, New Jersey, New Mexico, New York, Vermont, Virginia, Washington; also Guam and Washington DC).²⁴⁷ A Brookings blog recently called on President Biden to end the Drug War and its racist impact, and redirect funds to mental health and community

<https://publichealth.jhu.edu/2021/baltimores-no-prosecution-policy-for-low-level-drug-possession-and-prostitution-finds-almost-no-rearrests-for-serious-offenses#:~:text=Baltimore%20State's%20Attorney%20Marilyn%20Mosby,of%20the%20COVI%2D19%20pandemic>; Nina Feldman, *Time for Safehouse to Ask Forgiveness, Not Permission, on Philly Supervised Injection Site, Experts Say*, WHYY (Dec. 2, 2021), <https://whyy.org/articles/time-for-safehouse-to-ask-forgiveness-not-permission-on-philly-supervised-injection-site-experts-say/>; Nina Feldman, *In Philadelphia, Judges Rule against Opening 'Supervised' Site to Inject Opioids*, NPR (Jan. 14, 2021), <https://www.npr.org/sections/health-shots/2021/01/14/956428659/in-philadelphia-judges-rule-against-opening-a-medical-site-to-safely-inject-hero>; Jeffery C. Mays & Andy Newman, *Nation's First Supervised Drug Injection Sites Open in New York, N.Y.* TIMES (Nov. 30, 2021), <https://www.nytimes.com/2021/11/30/nyregion/supervised-injection-sites-nyc.html>; Amy Graff, *What to Know About the Safe Injection Site That Could Be Opening in San Francisco*, SFGATE (Nov. 17, 2021), <https://www.sfgate.com/bayarea/article/safe-injection-site-San-Francisco-16628526.php>. Arguably needle-exchange programs to prevent the spread of HIV and Hepatitis-C are also a move towards decriminalization, and in 2022 New Jersey joined 42 other states in legalizing such exchanges. *Sterile Syringe Exchange Programs*, KAISER FAM. FOUND. (Mar. 2, 2022), <https://www.kff.org/hiv/aids/state-indicator/syringe-exchange-programs/?currentTimeframe=0&sortModel=%7B%22colId%22:%22Location%22,%22sort%22:%22asc%22%7D>.

²⁴⁷ Claire Hansen, Horus Alas & Elliott Davis Jr., *Where is Marijuana Legal? A Guide to Marijuana Legalization*, U.S. NEWS & WORLD REP. (Jan. 6, 2022), <https://www.usnews.com/news/best-states/articles/where-is-marijuana-legal-a-guide-to-marijuana-legalization>.

reinvestment.²⁴⁸ And Congresswoman Bonnie Watson Coleman from New Jersey has introduced legislation to decriminalize drugs at the federal level.²⁴⁹

Further work needs to be done on the institutional changes necessary to lay the groundwork for downsizing the police in particular, and the judiciary – including probation, parole, and the drug courts – and jails and prisons as well. Ongoing state efforts to move beyond the Drug War, coupled with national discussions of drug decriminalization, underline the urgency. This research shows that decriminalizing drugs can release ample funds to improve public health and repair communities, even without considering potential revenues from taxing drug sales. The question is not whether decriminalizing drug use is warranted or possible, but how to accomplish it, both at the federal and state level.

²⁴⁸ John Hudak, *Biden Should End America's Longest War: The War on Drugs*, BROOKINGS (Sept. 24, 2021) <https://www.brookings.edu/blog/how-we-rise/2021/09/24/biden-should-end-americas-longest-war-the-war-on-drugs/>.

²⁴⁹ Drug Policy Reform Act of 2021, H.R. 4020, 117th Cong. (2021), <https://www.congress.gov/bill/117th-congress/house-bill/4020/text>. (the proposed legislation includes funding for public-health initiatives benefiting drug users).