

## **New Jersey Judiciary -- Commitment to Eliminating Barriers to Equal Justice: Immediate Action Items and Ongoing Efforts**

The New Jersey Judiciary is committed to ensuring access and fairness for everyone, and to seeking out and eliminating barriers to equality wherever they exist. Through the leadership of Chief Justice Stuart Rabner and the New Jersey Supreme Court, the Judiciary continues to work diligently to uncover and address institutional obstacles to justice for all people, especially those who have been disadvantaged by the court system and denied true justice.

On June 5, 2020 the New Jersey Supreme Court renewed its commitment to eradicating systemic barriers to equality and promised to do more to ensure that our courts administer justice. Today, the Court follows up on that statement by announcing specific interim goals that the New Jersey Judiciary will strive to achieve within the next year, while continuing ongoing efforts, including working internally and with our interbranch partners to identify, confront, and seek to remedy institutional bias and inequality.

### **Confronting the Need for Change**

Guided by the Court, New Jersey judges and staff over the past several weeks have engaged in frank conversations about discrimination against Black people and others, focusing on how systemic racism continues to contribute to disparate court experiences and outcomes for children and adults of color. The Judiciary, at all levels, will confront those challenges and continue to engage in critical self-analysis and collaborative discussion as one part of identifying and eliminating individual and institutional bias. To that end, the Court has approved expanded internal training and awareness programs for judges and staff to ensure that our community will be part of the solution.

### **The Supreme Court's One-Year Action Plan**

The New Jersey Judiciary has not yet identified all areas of disparity in our justice system and commits to redoubling our efforts to uncover those obstacles to equality while at the same time taking steps to address known barriers to access and justice.

In furtherance of the principles articulated in its June 5, 2020 statement, the New Jersey Supreme Court will work to accomplish the following reforms within the next year while expanding additional longer-term efforts:

1. **Supporting Juror Impartiality.** The Judiciary will work to implement policies and protocols to support juror impartiality, including: (a) expanded juror orientation content regarding implicit and explicit bias; (b) model jury charges on impartiality and implicit bias; (c) new and revised mandatory model jury selection questions on recognizing and counteracting bias in the jury process; and (d) examining options for changes to the Court Rules relating to impartiality in the juror selection process. Internally and in collaboration with stakeholders, we also will respond to the results of the “Peremptory Challenge Impact Study,” a forthcoming analysis by external experts of the effects of the exercise of peremptory challenges on the racial composition of jury venires and seated juries.
2. **Reducing Timeframes for Post-Dispositional Supervision.** Focusing on objective measures of client outcomes and community safety, we will reexamine durational requirements established by and within the control of the Supreme Court for persons on probation supervision. The Judiciary will codify recommended timeframes for adults on probation including those graduating from our Drug Court Program and/or Intensive Supervision Program (“ISP”) to ensure that supervisory terms are tailored to provide maximum benefit without prolonging non-rehabilitative court involvement for the purpose of collecting fines and fees that can be enforced without further supervision. We also will explore standardized best practices for juvenile probationary terms, including for the Juvenile Intensive Supervision Program (“JISP”), that prioritize incentives proven to have the greatest effect on long-term prosocial behavior changes.
3. **Supporting Juvenile Rehabilitation.** The Judiciary will examine options for retroactively rescinding and prospectively eliminating court-imposed punitive fines and penalties for juveniles, excluding restitution of monetary obligations and other statutorily required victim-compensation amounts. In conjunction with those efforts, we will continue expanding Juvenile Probation and JISP resources, including through development of culturally

focused trainings and programs to meet the needs of all youth under supervision, including substantial numbers of youth of color.

4. **Requiring Anti-Bias Continuing Legal Education.** The Supreme Court will revisit, refine, and adopt an “elimination of bias” requirement as part of statewide mandatory Continuing Legal Education for judges and attorneys.
5. **Using Technology to Make the Expungement Process Easier.** The Judiciary will improve opportunities for all persons to access expungement resources, including through ongoing in-person and virtual outreach efforts and expanded use of technology.
6. **Enabling Alternative Methods of Resolving Municipal Court Matters.** We will reduce the need for litigants to appear in person at Municipal Courts, including by expanding (a) the Statewide Violations Bureau Schedule to allow payment (without appearance) of additional low-level statutory fines and penalties; and (b) the Municipal Online Dispute Resolution application, which enables persons charged with minor matters to negotiate a plea amount via an online portal for approval by a judge.
7. **Broadening Language Access Resources.** Building on initial steps implemented during the COVID-19 pandemic, the Supreme Court will supplement the Judiciary Language Access Plan to provide more detailed guidance on interpreting services for remote court proceedings and additional resources and standards for indigenous language services.
8. **Reexamining Access to Misused Court Records.** The Supreme Court will prioritize ongoing efforts to amend Court Rule 1:38 (“Public Access to Court and Administrative Records”) to exclude from public access records that as currently maintained create inappropriate hardships for disadvantaged populations (e.g., records of landlord/tenant complaint filings that do not note the outcome), while upholding the Judiciary’s commitment to transparency.
9. **Improving the Landlord/Tenant Process.** The Judiciary will support fairer processes by providing plain language information to tenants and landlords about claims and defenses and engaging judges in focused review

of settlement agreements, especially those involving self-represented litigants.

The Court will strive to deliver results in the above nine areas within the next year as part of the continuing process to address pervasive barriers to justice.

### Continuing Critical Judiciary Initiatives

The New Jersey Judiciary has a long history of confronting race-based disparities in the courts. More than 30 years ago, New Jersey joined with New York, Michigan, and Washington to create the National Consortium on Racial and Ethnic Fairness in the Courts, and we continue to host provocative and necessary programs through the Consortium and the National Center for State Courts. Three decades ago, the New Jersey Supreme Court established a standing committee to examine and propose responses to racial inequality in the justice system, initially named the Committee on Minority Concerns. The Court in 2019 issued a new name – the Committee on Diversity, Inclusion, and Community Engagement – and an updated and expanded charge to that group, which continues to inform our policy initiatives through centralized and grassroots efforts with community stakeholders.

Aware of the dual challenges of a global pandemic and economic downturn, the Court commits to continuing to support meaningful access to and inclusion in the courts, including through the following critical initiatives.

- Through Municipal Court reforms, we have reexamined and modified the use of contempt sanctions; amended the Court Rules to cap financial penalties for failures to appear and failures to pay; limited the use of bench warrants as an enforcement tool; and by Court Order dismissed more than 787,000 unresolved, minor matters that were at least 15 years or older.
- Through juvenile justice reforms, including the Juvenile Detention Alternative (JDAI) program, we have substantially reduced the numbers of juveniles detained in secure facilities and supported young people in reinventing themselves and reclaiming their futures after early court involvement.

- Through Criminal Justice Reform, New Jersey has significantly reduced the numbers of Black people and others detained pretrial in state and county jails. This stops at the early stages a criminal justice process that otherwise leads to loss of employment, loss of housing, and loss of family connections.

In addition to those documented efforts, the New Jersey Judiciary in recent years has launched initiatives to deconstruct and recreate institutions that serve as operative points in providing equality and fairness, including the following:

- **Analyzing and Reforming the Jury Selection Process.** The Judiciary will continue its “Combined Jury Studies” started in 2016, which seek to identify areas of potential disparity and bias in the jury selection process. In consultation with external experts engaged in 2019, the Judiciary will continue (1) quantitative analysis of the representativeness of reporting juror pools, and (2) evaluation of potential disproportionate exclusion of people of color at critical junctures in the post-selection process, including the exercise of peremptory challenges. Those ongoing efforts will inform new strategies to support more representative juror pools and seated juries.
- **Transforming Probation Services.** The Judiciary’s Probation Services Division will continue to transition from a model based on monitoring and enforcement to a program committed to assisting clients in making positive behavior changes in their lives. Among other changes, Probation is (1) mitigating against individual implicit bias by using a validated risk/needs tool to assess recidivism risk and identify and target areas in need of intervention; (2) focusing on high risk cases and avoiding unnecessary criminal justice involvement for low-risk clients no longer in need of services; (3) using a structured response grid to ensure uniformity in responses and prioritization of incentives and graduated sanctions in lieu of frequent violations; and (4) training all Probation Officers to use cognitive-behavioral, problem-solving techniques to help clients in making and sustaining positive change.
- **Bridging the Digital Divide.** The Judiciary will continue to leverage technology to enable access to the courts, including through new and improved electronic filing systems designed for self-represented litigants. In launching and expanding such efforts, we recognize that people of color are less likely to have access to home computers and reliable internet service,

and we will continue to assist court users and provide technology when necessary, including in dedicated resource rooms in Judiciary facilities and, in some cases, via distribution of technology to jurors and others involved in virtual court proceedings.

Through the above ongoing efforts and other in-depth initiatives, the Judiciary will continue to dedicate resources to analyze judicial operations and implement data-driven reforms as part of improving processes and outcomes for people of color.

### Supporting Legislative Reforms

Systemic problems require systemic solutions. In conjunction with the above Judiciary-led reforms, the Court reiterates its ongoing commitment to work with the Executive and Legislative branches to respond to disparity. Mindful of its fundamental independence and neutrality, the Judiciary will collaborate with the Legislature and the Executive branch as appropriate on legislation in the following areas:

- **Reexamining the Jury Selection Process:** Working with partners to respond to the results of a forthcoming study on the exclusion of cognizable groups from jury venires and seated juries.
- **Mental Health Initiatives:** Supporting system-wide initiatives to improve the criminal justice system's handling of matters involving individuals with mental illness while improving access to mental health services for individuals with criminal and non-criminal court involvement, including through (1) creation of options to redirect eligible persons away from the criminal justice system and into appropriate case management and mental health services; and (2) establishment of court-annexed pilot programs for support and resources. Continuing the ongoing efforts of the Judiciary Mental Health Advisory Committee, which includes representatives from all three branches of government as well as health providers, mental health advocacy groups, and local law enforcement.
- **Juvenile Justice Reforms:** Supporting fairer processes and more equitable outcomes for juveniles, including: (1) expanding Office of Public Defender

representation of juveniles; (2) accelerating the rescission of certain juvenile delinquency fines and making discretionary post-incarceration supervision; (3) retroactively rescinding and dismissing juvenile fines and penalties beyond the purview of the Court; (4) removing youth from prison-like environments; (5) investing in non-prison-like rehabilitative programs; and (6) investing in mental health support services for juveniles.

- **Sentencing Reforms:** Implementing the recommendations of the Criminal Sentencing and Disposition Commission, including: (1) resentencing certain inmates; (2) establishing youthful age of defendant as a mitigating factor in sentencing; (3) retroactively rescinding or modifying mandatory terms of parole eligibility; and (4) studying compassionate release programs and possible elimination of mandatory minimum terms.
- **Municipal Court:** Supporting implementation of the recommendations of the Supreme Court Committee on Municipal Court Operations, Fines, and Fees, and the Working Group on the Municipal Courts, to amend statutes regarding (1) penalties for violations of municipal ordinances that may be prescribed by a municipality; (2) consequences of nonpayment; (3) incarceration for default on certain penalties (to increase the incarceration conversion rate); and (4) potential consolidation of municipal courts.
- **Reentry:** Supporting a fair start for persons in treatment and recovery through various means, including: (1) modifying legal consequences associated with marijuana offenses; (2) expanding the availability of expungements to include graduates of the Intensive Supervision Program (ISP); and (3) permitting those admitted into court-ordered supervisory treatment programs for drug/alcohol dependency to earn credit against amounts owed on court-imposed financial obligations.
- **Law Enforcement Decisions About Whom to Arrest and Prosecute.** Supporting efforts by the Attorney General to examine both identified and unintended factors that influence decisions about arrest and prosecution, recognizing that those early decision points affect the racial disparity that exists in New Jersey's jails where Black defendants still represent 55 percent of the jail population even though there are fewer defendants of all races and both genders in jail today under Criminal Justice Reform. Acknowledging

that potential initial disparities in arrest and prosecution contribute to future disparities throughout the criminal justice process. Continuing ongoing cooperation of all decision-makers within the criminal justice system and analysis of the disparities at each step in the arrest, prosecution, and pretrial process.

### Next Steps

The New Jersey Supreme Court recognizes that this effort “will require continued long-term commitment, dedication, and focus to institute lasting change.” Today, the Court announces an action plan to support such lasting change, bringing together critical self-exploration and dialogue, targeted short-term goals, and renewed commitment to eliminating systemic barriers to equality.