

Blueprint for Smart Justice

Kentucky



Blueprint *for* Smart Justice Kentucky

© 2018 AMERICAN CIVIL LIBERTIES UNION



COVER PHOTO: SHUTTERSTOCK/MOPICE

Contents

- Executive Summary 4
- The State of the Kentucky Prison System 6
 - What Is Driving People Into Prison? 6
 - The Current Prison and Jail Population 7
 - Why Do People Stay in Prison for So Long? 8
 - Who Is Imprisoned 9
 - People With Mental Health and Substance Use Disorders 9
 - Budget Strains 10
- Ending Mass Incarceration in Kentucky: A Path Forward 11
 - Reducing Admissions 11
 - Reducing Time Served 13
 - Reducing Racial Disparities 15
 - Taking the Lead 15
 - Reducing Disability Disparities 16
 - Forecaster Chart 18
 - Total Fiscal Impact 21
 - Methodology Overview 21

Executive Summary

Over the past five decades, the United States has dramatically increased its reliance on the criminal justice system as a way to respond to drug addiction, mental illness, poverty, and underfunded schools. As a result, the United States today incarcerates more people, in both absolute numbers and per capita, than any other nation in the world. Millions of lives have been upended and families torn apart. This mass incarceration crisis has transformed American society, damaged families and communities, and wasted trillions of taxpayer dollars.

We all want to live in safe and healthy communities, and our criminal justice policies should be focused on the most effective approaches to achieving that goal. But the current system has failed us. It's time for the United States to dramatically reduce its reliance on incarceration, invest instead in alternatives to prison and approaches better designed to break the cycle of crime and recidivism, and help people rebuild their lives.

The ACLU's Campaign for Smart Justice is committed to transforming our nation's criminal justice system and building a new vision of safety and justice. The Campaign is dedicated to cutting the nation's incarcerated population in half and combatting racial disparities in the criminal justice system.

To advance these goals, the Campaign partnered with the Urban Institute to conduct a two-year research project to analyze the kinds of changes needed to cut the number of people in prison in each state by half and reduce racial disparities in incarceration. In every state, Urban Institute researchers identified primary drivers of incarceration. They then predicted the

impact of reducing prison admissions and length of stay on state prison populations, state budgets, and the racial disparity of those imprisoned.

The analysis was eye-opening.

In every state, we found that reducing the prison population by itself does little to diminish racial disparities in incarceration – and in some cases would worsen them. In Kentucky – where Black people made up only 8 percent of the state's adult population in 2017 yet constituted 21 percent of its prison population¹ – reducing the number of people imprisoned will not on its own reduce racial disparities within the prison system. This finding confirms for the Campaign that urgent work remains for advocates, policymakers, and communities across the nation to focus on efforts like policing and prosecutorial reform that are specific to combatting these disparities.

In the last three decades, Kentucky's prison population has grown exponentially. While the national state per capita imprisonment rate dropped by 7 percent between 2000 and 2016, the per capita rate of people imprisoned in Kentucky grew by a stunning 41 percent over the same time period.² As of August 2018, 24,157 Kentuckians were in the prison system.³ Harsh drug laws and the aggressive prosecution of drug offenses are primary drivers of prison admissions in Kentucky. In 2016, nearly two of every five (38 percent) new court commitments were drug offenses.⁴ An increasing number of people are being sent to prison for parole violations as well: Between 2012 and 2016, total admissions to Kentucky prisons increased by 32 percent, while admissions for parole violations grew by

50 percent. As of 2016, one in four prison admissions were for parole violations.⁵

As the prison population ballooned, the Kentucky Department of Corrections (KDOC) leaned on local jails to hold people with felony convictions while they awaited transfer to prison.⁶ Between 2011 and 2017, the KDOC county jail population increased by 35 percent,⁷ and in 2018, local Kentucky jails were operating at 121 percent of their capacity.⁸ Once ensnared in the criminal justice system, Kentuckians sentenced to prison tend to stay there for a long time. Nearly 30 percent of people in state prisons were serving sentences of at least 16 years in 2017.⁹ Lengthy prison time in the state can be attributed to limitations on the amount of “good time” someone can earn against their sentence, regardless of readiness for release, as well as harsh mandatory minimum sentences,¹⁰ sentencing enhancements for people with prior felony convictions,¹¹ and low parole rates.¹² All of these numbers come with a hefty price tag. General fund corrections spending in Kentucky grew 234 percent between 1985 and 2016, outpacing spending on other budget priorities, such as education.¹³

So what’s the path forward?

To start, Kentucky lawmakers should eliminate money bail from the state’s pretrial release system. This would ensure that no one stays in Kentucky’s overcrowded county jails simply because they cannot pay their bail, save counties money, and uphold the presumption of innocence. It would also prevent future prison admissions: People detained pretrial are four times more likely to wind up in prison than people who are not detained.¹⁴ Criminal justice stakeholders should also invest in more diversion programs for people with substance use disorders and for those with mental health disabilities. The state already has a successful history with such programs, but they must be expanded. Sentencing reform, too, is crucial in reducing the prison population. A 2008 recommendation from the Kentucky Criminal Justice Council to establish statutes of limitations for certain felonies should be adopted by the Legislature immediately.¹⁵ Further, the Legislature should reduce mandatory minimums that keep people in prison for

excessive periods of time and recalibrate the state’s criminal sentencing ranges.

Focusing on juvenile justice reform in Kentucky is another key way to reduce the state’s prison population. Children prosecuted in the adult criminal justice system are more likely to reoffend and wind up back behind bars later in life.¹⁶ To prevent kids from making unnecessary contact with the justice system, lawmakers should establish a minimum age of delinquency at 12 years old and repeal state laws that mandate juveniles facing felony charges be tried as adults.¹⁷

The State of the Kentucky Prison System

The Kentucky prison population¹⁸ has grown more than six-fold between 1980 and 2016.¹⁹ As of August 2018, Kentucky imprisoned 24,157 people – a 17 percent increase in just 10 years.²⁰ While the national state per capita imprisonment rate dropped by 7 percent between 2000 and 2016, the per capita rate of people imprisoned in Kentucky grew 41 percent, the fourth-largest increase in the nation over that time period.²¹

What Is Driving People Into Prison?

A litany of offenses drives people into Kentucky’s prisons. In 2016, Kentucky admitted 18,662 people²² to prison – a 32 percent increase in admissions since 2012. Drug offenses were the most prevalent offense, accounting for nearly two in five (38 percent) new court

AT A GLANCE

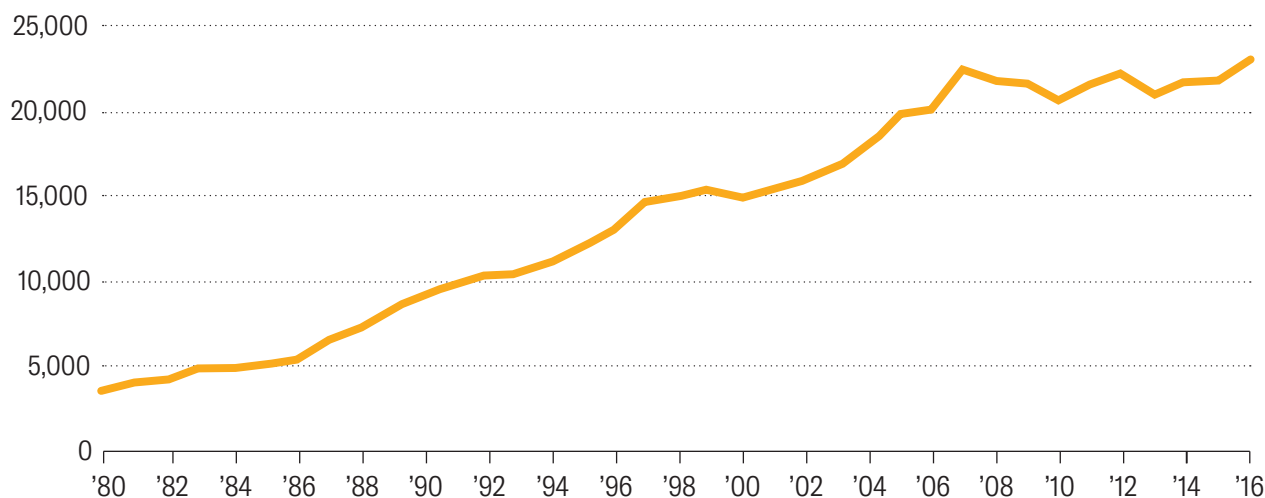
KENTUCKY PRISONS

Kentucky’s prison population grew by **17 percent** between 2008 and 2018.

Kentucky imprisoned **24,157** people in August 2018.

The per capita rate of people imprisoned in Kentucky grew **41 percent** between 2000 and 2016.

KENTUCKY PRISON POPULATION



commitments that year. Overall, drug possession admissions accounted for approximately 16 percent of new court commitments in 2016, while drug trafficking and importation (which includes unlawfully transporting controlled substances into Kentucky for sale or distribution) accounted for around an additional 16 percent. Property offenses accounted for more than one in four (27 percent) new court admissions in 2016.²³

According to the most recently available data (2015), at least 61 percent of people admitted to prison in 2015 had prior felony incarcerations.²⁴

A growing number of people are sent to prison for a violation of parole. Between 2012 and 2016, total admissions to Kentucky prisons increased by 32 percent, while admissions for parole violations grew by 50 percent. Much of that growth can be attributed to an increase in parole revocations for drug and property offenses, which increased 58 percent and 59 percent, respectively. As of 2016, parole violations accounted for one in four admissions to Kentucky prisons, and nearly all (96 percent) of people returned to prison from parole that year were for revoked for a technical violation rather than a new crime.²⁵

AT A GLANCE

KENTUCKY JAIL AND PRISON POPULATION

The county jail population in Kentucky grew by **48 percent** between 2011 and 2018

Nearly **1 in 4** people in Kentucky prisons were imprisoned for a drug offense in 2015.

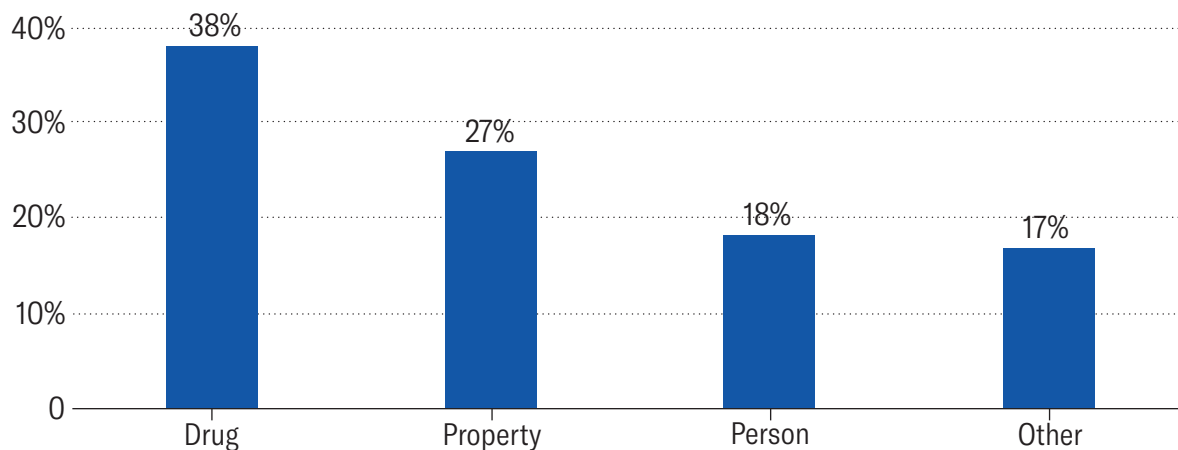
Property offenses accounted for **24 percent** of the Kentucky prison population in 2015.

The Current Prison and Jail Population

As the state prison population has grown, the KDOC has increasingly relied on county jails to hold people convicted of a felony while they are awaiting transfer to a permanent facility.²⁶ The KDOC county jail population increased 48 percent between 2011 and 2018.²⁷

As of August 2018, Kentucky held a total of 24,929 people in county jails, which were operating at 121

KENTUCKY PRISON ADMISSIONS BY OFFENSE TYPE (2016)*



* Crime and Justice Institute, “Kentucky Prison Drivers: Kentucky Justice Reinvestment Work Group” (PowerPoint presentation, September 20, 2017), <http://www.crj.org/assets/2017/10/KY-Drivers-I-Final.pdf>.

percent of their overall capacity.²⁸ And almost half (47 percent) of all people under KDOC jurisdiction were serving time in county jails while awaiting transfer to a permanent facility.²⁹

In addition to the 11,344 people awaiting transfer to a KDOC facility, many Kentuckians are incarcerated in county jails pretrial, meaning they have not yet been convicted of a crime.³⁰ According to the most recently available data (2015), nearly half (47 percent) of all people incarcerated in Kentucky jails have not been convicted of a crime.³¹

In 2016, Kentucky’s Supreme Court took an important step toward policy reform with Amended Order 2016-10. The order requires that most people³² charged with nonviolent, nonsexual misdemeanors who are found to be low or moderate risk through a pretrial assessment tool³³ be released from jail while awaiting trial.³⁴

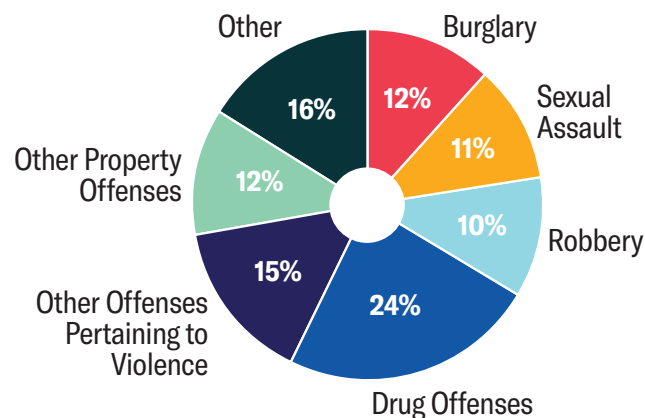
In 2015, drug offenses represented the most common offense in Kentucky’s prisons, accounting for around one in four (24 percent) people imprisoned. Between 2005 and 2015, the number of people imprisoned for property offenses increased by 16 percent, accounting for nearly one-quarter (24 percent) of the Kentucky prison population in 2015.³⁵

Why Do People Stay in Prison for So Long?

In 2015, the average person imprisoned in Kentucky was serving 25 percent more time than the average person in 2005 – increasing from an average of 2.4 years to 3.1 years. This was driven in part by an increase in the amount of time served for drug offenses, which rose by 22 percent during the same time period. Between 2005 and 2015, the median amount of time served for all offenses grew by 16 percent.³⁶

Over the past decade, Kentucky has seen a drop in the number of people locked up in its prisons for shorter sentences, while the number of those serving time for longer sentences increased. As of June 2017, almost one-third (29 percent) of people serving time in Kentucky prisons were sentenced to at least 16 years.

KENTUCKY PRISON POPULATION BY OFFENSE TYPE (2015)



Such sentences grew by 11 percent between 2011 and 2017.³⁷

Restrictions on release: Kentucky limits the amount of time someone can earn against their sentence for participation in programming and rehabilitation, regardless of readiness for release. Because of these restrictions, many people who might otherwise be returned to their communities could stay in prison for years. Kentucky also imposes a harsh mandatory sentencing structure, which requires severe sentence

AT A GLANCE

LENGTH OF IMPRISONMENT

29 percent of people imprisoned in 2017 were serving sentences of at least 16 years.

Kentucky granted parole to **less than half** of cases in 2016.

The average length of time served for drug offenses increased by **22 percent** between 2005 and 2015.

length ranges for certain crimes, regardless of the circumstance.³⁸ Depending on the conviction, people must serve up to 85 percent of their sentence before they can be released.³⁹

Sentencing enhancements: Kentucky’s criminal code includes sentencing enhancements that trigger mandatory prison sentences in certain situations, including when people have prior felony convictions, among many other situations. Under Kentucky law, a person with a prior felony conviction who is convicted of a new felony against a person is ineligible for probation, shock probation (short prison sentences followed by probation), or conditional discharge (release based on an individual meeting specific conditions).⁴⁰

Low parole rates: In 2016, Kentucky processed more than 20,000 parole cases but granted parole to less than half (46 percent) of them.⁴¹ In many cases, people with prior felony convictions who are sentenced for violent offenses are entirely ineligible for parole.⁴²

Who Is Imprisoned

Black Kentuckians: Black people are overrepresented at multiple stages of the justice system in Kentucky. According to the most recently available data, despite accounting for only 8 percent of the state’s adult population (2017),⁴³ they accounted for 14 percent of arrests (2016)⁴⁴ and 21 percent of the prison population (2017).⁴⁵ In 2017, Black adults were imprisoned at more than three times the rate of white adults,⁴⁶ and as of 2014, one in 27 Black men across the state were imprisoned.⁴⁷

Disabled Kentuckians: In 2016, it was estimated that 30 percent of people in Kentucky prisons are being treated for a mental illness, and an estimated one in five has a severe mental illness. Based on national data, it is possible that rates of mental illness are even higher in Kentucky jails.⁴⁸

Older Kentuckians: Though generally considered to pose a negligible risk to public safety,⁴⁹ the prison population aged older than 50 increased by 23 percent

AT A GLANCE

DEMOGRAPHICS

1 in 27 Black men in Kentucky were imprisoned in 2014.

An estimated **30 percent** of people in Kentucky prisons are receiving treatment for a mental illness.

As of July 2017, Kentucky’s women’s prisons are operating at **102.8 percent** capacity.

between 2011 and 2017, accounting for one in seven people (14 percent) in Kentucky prisons in 2017.⁵⁰

Female Kentuckians: According to the most recently available national data (2016), Kentucky has the second-highest per capita rate of women’s imprisonment in the nation.⁵¹ The number of women imprisoned in Kentucky has remained constant in recent years, accounting for 13 percent of the prison population in 2017.⁵² As of July 2017, women’s prisons in Kentucky were operating at 102.8 percent of their capacity.⁵³

People With Mental Health and Substance Use Disorders

As with many states, Kentucky has high numbers of people with mental health and addiction issues in its prisons and jails. Some counties are clearly unprepared to work with this population. On one day in Jefferson County in 2015, for example, 80 percent of people held in solitary confinement were reported to be there because they had a mental illness.⁵⁴

Government officials appear aware of the problem. “Kentucky has the worst history of incarcerating the mentally ill, and we’re aware of that,” said Daviess County Circuit Judge Jay Wethington, the county’s chief circuit judge. “Judge (Joe) Castlen and I have a

lot of experience with the mentally ill. We know...the mentally ill need treatment, not incarceration.”⁵⁵

Budget Strains

As Kentucky’s prison population has risen, so has the cost burden. Kentucky spent more than \$570 million on corrections in 2017.⁵⁶ As of 2016, corrections spending accounted for nearly 6 percent of the state general fund expenditures. General fund spending on corrections grew by 234 percent between 1985 and 2016, far outpacing spending on other state priorities like education.⁵⁷

AT A GLANCE

BUDGETS

Kentucky spent more than **\$570 million** on corrections in 2017.

Kentucky increased general fund spending on corrections **234 percent** between 1985 and 2016.

Ending Mass Incarceration in Kentucky: A Path Forward

Mass incarceration is a result of many systems failing to support our communities. To end it, we must develop policies that better address inadequacies throughout our education, health care, and economic systems – to name a few. By providing comprehensive funding for community programs and housing, for example, the Legislature can significantly reduce the number of people living below the poverty line in Kentucky, which is at 18.5 percent, one of the highest percentages in the nation according to the most recent census.⁵⁸ This reform will ultimately improve the standard of living in the state and better address criminogenic needs.

However, there are many criminal justice policy reforms that will help Kentucky improve the criminal justice system broadly. For example, unifying the state and local correctional systems and eliminating the death penalty are important steps towards making a fair and just system. There are also specific policy reforms that will move Kentucky along the path towards ending its mass incarceration crisis. It will ultimately be up to the people and policymakers of Kentucky to decide which changes to pursue. To reach a 50 percent reduction, policy reforms will need to reduce the amount of time people serve in prisons and/or reduce the number of people entering prison in the first place.

Reducing Admissions

To end mass incarceration, Kentucky must break its overreliance on prisons as a response to social problems. Evidence indicates that prisons seldom offer adequate solutions to wrongful behavior. In fact, imprisonment can be counterproductive – failing

to end cycles of harm and violence or to provide rehabilitation for incarcerated people or adequate accountability to the survivors of crime.⁵⁹ Here are some strategies:

- **Eliminate money bail:** Far too often, people who cannot afford their bail end up in jail for weeks, months, or, in some cases, years as they wait for their day in court. When this happens, the criminal justice system leaves them with a difficult choice: take a plea deal or fight the case from behind bars. This is challenging for a number of reasons. Pretrial detention limits how often a defense attorney can meet with their client, preventing them from building a strong case.⁶⁰ Moreover, even one week of detention can have massive effects on someone's life, including potential job or housing loss, education disruption, and/or an inability to parent. After even a short stay in jail, taking a plea deal can sound less burdensome than losing everything.⁶¹ Ultimately, those detained pretrial are three to four times more likely to end up in jail or prison.⁶² The Legislature should eliminate money bail from the state's pretrial release system. By doing so, it will uphold the presumption of innocence, save county jail expenses, and ensure no one stays in jail simply because they are poor.
- **Alternatives to incarceration:** The good news is that alternatives exist. Several types of alternative-to-imprisonment programs have shown great success in reducing criminal activity. Programs offering support services such as substance use disorder treatment, mental health care, employment, housing,

health care, and vocational training – often with a community service requirement – have significantly reduced recidivism rates for participants. Restorative justice programs – which are designed to hold responsible people accountable and support those who were harmed – can also be particularly promising. When they are rigorous and well implemented, these processes have not only been demonstrated to reduce recidivism for defendants,⁶³ but they have also been shown to decrease symptoms of post-traumatic stress in victims of crime.⁶⁴ Commonwealth’s Attorneys and judges who embrace these solutions can fulfill their responsibilities to public safety and to supporting victims in their healing – and can often generate far better results than imprisonment can deliver. Other successful models include programs that divert people to treatment and support services before arrest and prosecutor-led programs that divert people before they are charged.

- **Alternatives to incarceration – mental health and substance use treatment:** Mental health diversion can be an effective way to redirect people with disabilities out of the criminal legal system and into supportive community treatment. Diversion programs have been shown to be effective for people charged with both nonviolent and violent offenses.⁶⁵ When implemented effectively, diversion reduces arrests, encourages voluntary treatment in the community, and saves money.⁶⁶ Effective diversion programs coordinate with community services that provide a wide range of substantial, quality wraparound treatment and support for people with disabilities to access housing, employment, and intensive, individualized supports in the community. After an initial investment in community supports, diversion programs have the potential of saving jurisdictions large amounts of money.⁶⁷

Kentucky has a successful history with such programs. The Department of Public Advocacy’s Alternative Sentencing Worker Program offers treatment and services to individuals with

substance abuse and/or mental health disorders in lieu of incarceration.⁶⁸ Participants receive an individualized comprehensive plan tailored to better address their underlying needs and facilitate rehabilitation. The Legislature should adopt a statewide intensive care management system for those in need of treatment rather than incarceration and further fund existing programs that divert people as early as possible from the criminal justice system into appropriate care.

- **Juvenile justice reform:** The Kentucky Legislature can reduce the number of juveniles behind bars by ensuring that the courts treat youths as minors in most circumstances. Research has shown that children prosecuted in the adult criminal justice system are not only more likely to reoffend, but also suffer through traumatizing experiences.⁶⁹ Kentucky lawmakers should first establish the minimum age of delinquency to be 12 years old before a child can be charged with a public or status offense. Further, they should remove all state laws that mandate juveniles charged with felonies be transferred to circuit courts and tried as adults.⁷⁰ Instead, juveniles should remain under a system that recognizes their immaturity as well as their potential. Lastly, the Kentucky Legislature must ensure that the juvenile system is the last resort for addressing child misbehavior in schools. Instead of addressing students’ behavior through in-house resources, like counseling, schools often call the police if they consider an infraction serious enough. This is one way that young people can end up involved in the criminal justice system at early ages. By encouraging judges to use their power to dismiss cases that originate with school officials or on school grounds, when the matter may be adequately addressed through school disciplinary or regulatory process, courts will have more time to deal with serious cases and avoid incarcerating children during their most formative years.

- **Sentencing reform — statute of limitations:** Under current law, Commonwealth’s Attorneys may charge a person with any felony no matter how many years have passed since the alleged crime occurred.⁷¹ Investigations, prosecutions, and defenses for older cases clog court dockets, require significant resources, and are often unreliable due to the destruction of evidence and the unavailability or failing memory of witnesses. In 2008, the Kentucky Criminal Justice Council, charged with conducting a comprehensive review of the state’s criminal justice system, unanimously adopted a recommendation to establish statutes of limitations for Class D and C felonies, barring the prosecution of these types of felonies after five and 10 years, respectively.⁷² It is time for the Kentucky Legislature to adopt this recommendation. In doing so, it will establish finality in regards to alleged minor felony conduct, just as the system does for misdemeanor cases.
- **Parole and probation — technical violations:** Eliminating prison time for technical violations during parole or probation will reduce prison admissions. Too often, people on conditional release end up reincarcerated after their parole or probation officer finds that they committed technical violations of their conditions of supervision, such as failing a drug test, missing curfew, or not being able to pay court fees. Incarcerating people who have not committed a new crime does a disservice to the criminal justice system, as it institutes an overly harsh punishment to people who are in the process of reentry and overburdens correctional facilities. The Legislature should require courts considering revocation to impose graduated sanctions instead, finding a more appropriate response to simple violations. Further, if a judge decides to opt for revocation, the Legislature should require they have clear and convincing evidence for their reasoning. People with disabilities are twice as likely to have their parole or probation revoked, likely due in part to the inability or unwillingness of supervision officers

to accommodate their disabilities.⁷³ Parole and probation officers are required to provide reasonable accommodations so that parolees with disabilities have an equal opportunity to comply with the requirements of parole. Proper training of parole officers and greater awareness of and advocacy for these requirements could reduce the number of technical violations significantly.

- **Support reentry:** Establishing a smoother reentry process will cut people’s risks of being incarcerated again, and ultimately make communities in Kentucky safer. About two-thirds of those incarcerated in state prisons across the country are rearrested within three years of their release.⁷⁴ This can lead to more crime, more victims, and more pressure on already overburdened courts. The Legislature should invest in reentry tools, programs, and tactics to ensure long-lasting social welfare and public safety. For example, the Legislature should fund the KDOC to introduce a peer specialists program, where formerly incarcerated individuals who have successfully reentered society assist newly released individuals in their path towards their own successful reentry.

Reducing Time Served

Reducing the amount of time people serve, even by just a few months, can lead to thousands of fewer people in Kentucky prisons. Here’s how:

- **Sentencing reform:** The Kentucky Legislature should recalibrate the state’s criminal sentencing ranges to more appropriate levels. The Commonwealth’s penchant for passing additional criminal penalty enhancements year after year will serve only to worsen prison overcrowding. In recent years, the Legislature passed laws calling for longer sentences related to gang activity, crimes involving guns, and drug offenses.⁷⁵ These broad enhancements, some which can even be added to misdemeanor

offenses, arguably have a disparate impact on communities of color and further criminalize substance use disorders, which should be treated as a public health issue. Instead, the Legislature should lower sentencing ranges and enhancements, place caps on non-life sentences, and reconsider which offenses should constitute felony crimes. Kentuckians convicted of felony offenses, along with their families, bear the burden of a lifetime of collateral consequences, including losing the right to vote and making it difficult to provide for themselves and their families. The Legislature should reclassify drug possession, welfare fraud, and flagrant nonsupport as misdemeanor offenses, and it should raise the felony theft threshold from \$500 to \$2,500 to account for inflation while remaining in line with other state thresholds.⁷⁶ Further, the Legislature and courts should consider where fines might be more appropriate than jail time for misdemeanor convictions.

- **Reduce mandatory minimums:** The Kentucky Legislature should reduce mandatory minimums that keep people in prison even when they can demonstrate that they can live safely in the community. Too often, the law requires people to serve a mandatory minimum of 85 percent of their sentence before any possibility of release.⁷⁷ These harsh, one-size-fits-all approaches don't allow for variables, unique to each case, like mental health history, trauma, or substance use disorder to be taken into account. They also make a significant portion of the incarcerated population automatically ineligible for certain reduction credits, regardless of individual mitigating circumstances. Further, they limit the discretion of other actors in the criminal justice system, including the court, jury, and parole board. By reducing mandatory minimums to 50 percent or up to 12 years (as was the case before 1998), the Legislature can ensure that people who have shown improvement while serving their sentences are allowed to return to their communities.

- **Eliminating the Persistent Felony Offender law:** Kentucky's Persistent Felony Offender law imposes harsher sentences than someone would otherwise receive if they have a felony record, including imposing life sentences without parole for certain crimes.⁷⁸ Sentences like these that extend sentence lengths behind bars ultimately contribute to a growing prison population. Mandatory minimums, including the Persistent Felony Offender law in Kentucky, "essentially guarantee a stream of injustices, as some offenders in some cases really will have the kind of important mitigations that demand a sentence in the lower end of the range forbidden by the mandatory minimum."⁷⁹ The Kentucky Legislature should eliminate this harsh enhancement by repealing the Persistent Felony Offender law.
- **Parole reform:** Improving parole and release policies and practices to ensure that eligible people are paroled more quickly is another way to reduce the amount of time people spend in prison. First, the Kentucky Legislature should make the parole and release process more efficient and transparent. The Justice and Public Safety Cabinet should create a pre-parole review 12 to 18 months in advance of parole eligibility to advise potential parolees of any programs they must complete prior to parole. Further, the Kentucky Legislature should expand parole eligibility for people that committed low-level crimes, as well as propose an automatic age-based review when someone reaches 50, since research has found that the likelihood a person will commit a crime drops drastically after the age of 40.⁸⁰ Finally, the Legislature should broaden the instances in which an incarcerated individual can qualify for compassionate release. This option is currently limited to incarcerated people with terminal conditions who are independently determined to have less than a year to live.⁸¹ Instead, the state should ensure that anyone who can be more effectively and efficiently treated outside a correctional setting is able to get that treatment, as proposed in 2012

in House Bill 528, which held bipartisan support and 25 sponsors.⁸²

- **Earned time/earned credit reform:** Current law grants sentence credit to defendants released pretrial on home incarceration⁸³; by contrast, convicted defendants who are released on an appeal bond are not given any credit despite having their liberty severely constrained similarly for months or years. The Kentucky Legislature should amend the law so that defendants on home incarceration receive the same credit, regardless of the kind of bond that keeps them constrained with ankle monitors. By enacting this reform, the Legislature would allow courts to maintain local control of defendants it determines to be low risk while saving the state the expense of incarceration while the appeal is pending.

Reducing Racial Disparities

Reducing the number of people who are imprisoned in Kentucky will not on its own significantly reduce racial disparities in the prison system. Racial disparities need to be addressed both in the community and at every stage of the criminal justice process.

People of color (especially Black, Latino, and Native American people) are at a higher risk of becoming involved in the justice system, including living under heightened police surveillance and being at higher risk for arrest. This imbalance cannot be accounted for by disparate involvement in illegal activity, and it grows at each stage in the justice system, beginning with initial law enforcement contact and increasing at subsequent stages such as pretrial detention, conviction, sentencing, and postrelease opportunity.⁸⁴ Focusing on only one of the factors that drives racial disparity does not address issues across the system.

One of the factors that disproportionately affect young people of color is judges' disparate use of diversion. While Kentucky's 2014 juvenile justice reform has significantly reduced the general number of detained juveniles, the number of detained Black youth has stayed relatively flat.⁸⁵ Proportionally,

TAKING THE LEAD

Prosecutors: They decide what charges to bring and which plea deals to offer. They can decide to divert more people to treatment programs (for example, drug or mental health programs) rather than send them to prison. And they can decide to charge enhancements that require the imposition of prison sentences.

State lawmakers: They decide which offenses to criminalize, how long sentences can be, and when to take away judges' discretion. They can change criminal laws to remove prison as an option when better alternatives exist, and they can also fund the creation of new alternatives.

Parole boards: They decide when to allow people to leave prison. In Kentucky, the parole board is an especially important player when it comes to reforming how long people spend in prison.

Judges: They often have discretion over pretrial conditions imposed on defendants, which can make a difference. For example, individuals who are jailed while awaiting trial are more likely to plead guilty and accept longer prison sentences than people who are not held in jail pretrial. Judges can also have discretion in sentencing and should consider alternatives to incarceration when possible.

there are now more youths of color incarcerated than before the 2014 reform. Although the reform offered a menu of diversion options for youth, judges have denied diversion agreements for Black juveniles at a higher rate than for white juveniles.⁸⁶ The Kentucky Legislature must ensure that everyone is equal under the eyes of the law and work towards removing implicit biases throughout the system. Further, racial disparity is so ingrained in the system that it cannot be mitigated by solely reducing the scale of mass incarceration. Shrinking the prison population across the board will likely result in lowering imprisonment rates for all racial and ethnic populations, but it will not address comparative disproportionality across populations. For example, focusing on reductions to prison admissions and length of stay in prison is critically important, but those reforms do not address the policies and practices among police, prosecutors, and judges that contribute greatly to the racial disparities that plague the prison system.

New Jersey, for example, is often heralded as one of the most successful examples of reversing mass incarceration, passing justice reforms that led to a 26 percent decline in the state prison population between 1999 and 2012.⁸⁷ However, the state did not intentionally target racial disparities in incarceration and, in 2014, Black people in New Jersey were still more than 12 times as likely to be imprisoned as white people – the highest disparity of any state in the nation.⁸⁸

Ending mass incarceration is critical to eliminating racial disparities, but it's not sufficient without companion efforts that take aim at other drivers of racial inequities outside of the criminal justice system. Reductions in disparate imprisonment rates require implementing explicit racial justice strategies.

Some examples include:

- Ending overpolicing in communities of color
- Evaluating prosecutors' charging and plea-bargaining practices to identify and eliminate bias
- Investing in diversion/alternatives to detention in communities of color

- Reducing the use of pretrial detention and eliminating wealth-based incarceration
- Ending sentencing enhancements based on location (drug-free school zones)
- Reducing exposure to reincarceration due to revocations from supervision
- Requiring racial impact statements before any new criminal law or regulation is passed and requiring legislation to proactively rectify any potential disparities that may result with new laws or rules
- Fighting discriminatory gang sentencing enhancements that disproportionately target people of color by passing bills that require monitoring of recently passed gang sentencing bills to ensure they are not being applied in a way that heightens the racial disparity in prisons
- Shifting funding from law enforcement and corrections to community organizations, job creation, schools, drug and mental health treatment, and other social service providers

Reducing Disability Disparities

The rate of people with disabilities in the criminal system is two to six times that of the general population.⁸⁹ In particular, people with psychiatric disabilities are dramatically overrepresented in jails and prisons across the country.⁹⁰

- People showing signs of mental illness are twice as likely to be arrested as people without mental illness for the same behavior.⁹¹
- People with mental illness are sentenced to prison terms that are, on average, 12 percent longer than those of other people in prison.⁹²
- People with mental illness stay in prison longer because they frequently face disciplinary action from conduct that arises due to their illness – such as attempted suicide – and they seldom qualify for early release because they are not able

to participate in rehabilitative programming, such as educational or vocational classes.⁹³

Furthermore, sentencing reforms appear to leave people with psychiatric disabilities who are incarcerated behind. In recent years, the prison population in California, for example, has decreased by more than 25 percent, but the number of people with a serious mental disorder has increased by 150 percent—an increase in both the rate and the absolute number of incarcerated people with psychiatric disabilities.⁹⁴

Screening tools to evaluate psychiatric disabilities vary by state and jurisdiction, but the most reliable data indicates that more than half of jail populations and close to half of prison populations have mental health disabilities.⁹⁵ The fact that people with mental health disabilities are arrested more frequently, stay incarcerated longer, and return to prisons faster is not due to any inherent criminality related to psychiatric disabilities. It arises in part because of the lack of accessible and appropriate mental health treatment in the community; in part because of a perception of dangerousness by police, prosecutors, and judges; and in part because prison staff and probation officers fail to recognize and accommodate disability.

Many people of color in jails and prisons are also people with disabilities, and efforts to reduce racial disparities must go hand in hand with efforts to reduce disability disparities.⁹⁶ Not surprisingly, many of the strategies to reduce disability disparities are similar to approaches that reduce racial disparities. Some examples include:

- Investing in pre-arrest diversion:
 - Creating behavioral health centers, run by state departments of health, as alternatives to jails, or emergency rooms for people experiencing mental health crises or addiction issues
 - Training dispatchers and police to divert people with mental health issues who commit low-level nuisance crimes to these behavioral health centers. Jurisdictions that have followed this approach

“Merely reducing sentence lengths, by itself, does not disturb the basic architecture of the New Jim Crow. So long as large numbers of African Americans continue to be arrested and labeled drug criminals, they will continue to be relegated to a permanent second-class status upon their release, no matter how much (or how little) time they spend behind bars. The system of mass incarceration is based on the prison label, not prison time.”⁹⁸

—From *The New Jim Crow*, Michelle Alexander

have significantly reduced their jail populations.⁹⁷

- Ending arrest and incarceration for low-level public order charges, such as being drunk in public, urinating in public, loitering, trespassing, vandalism, and sleeping on the street. If needed, refer people who commit these crimes to behavioral health centers.
- Requiring prosecutors to offer diversion for people with mental health and substance abuse disabilities who are charged with low-level crimes
- Evaluating prosecutors’ charging and plea-bargaining practices to identify and eliminate disability bias
- Investing in diversion programs and alternatives to detention designed for people with disabilities, including programs that provide supportive housing, Assertive Community Treatment, wraparound services, and mental health supports
- Reducing the use of pretrial detention while increasing reminders of court dates and other supports to ensure compliance with pretrial requirements

- Reducing reincarceration due to parole or probation revocations through intensive case management, disability-competent training for officers on alternatives to incarceration and reasonable modifications to requirements of supervision, and no return to incarceration for technical violations
- Addressing bias against mental disabilities in risk assessment instruments used to assist decision-making in the criminal justice system
- Shifting funding away from law enforcement and corrections into supportive housing, intensive case management, schools, drug and mental health treatment, community organizations, job creation, and other social service providers

Forecaster Chart

There are many pathways to cutting the prison population in Kentucky by 50 percent. To help end mass incarceration, communities and policymakers will need to determine the optimal strategy to do so. This table presents one potential matrix of reductions that can contribute to cutting the state prison population in half by 2025. The reductions in admissions and length of stay for each offense category were selected based on potential to reduce the prison population, as well as other factors. To chart your own path to reducing mass incarceration in Kentucky, visit the interactive online tool at <https://urbn.is/ppf>.

CUTTING BY 50%: PROJECTED REFORM IMPACTS ON POPULATION, DISPARITIES, AND BUDGET

Impact Compared to 2025 Baseline*				
Offense category**	Policy outcome	Prison population impact	Impact on racial and ethnic makeup of population***	Cost savings****
Drug offenses	<ul style="list-style-type: none"> Reduce average time served by 60% (from 0.74 to 0.30 years) Institute alternatives that reduce admissions by 30% (2,158 fewer people admitted) 	16.37% reduction (3,366 fewer people)	White: 0.5% decrease Black: 0.9% increase Hispanic/Latino: 9.1% increase Native American: 4.0% decrease Asian: 4.4% increase Other: 3.9% increase	\$104,662,735
Burglary	<ul style="list-style-type: none"> Reduce average time served by 50% (from 1.10 to 0.55 years) Institute alternatives that reduce admissions by 20% (493 fewer people admitted) 	7.92% reduction (1,628 fewer people)	White: 1.1% decrease Black: 3.2% increase Hispanic/Latino: 2.2% increase Native American: 2.0% increase Asian: 1.0% increase Other: 2.8% increase	\$42,533,158
Public order offenses*****	<ul style="list-style-type: none"> Reduce average time served by 60% (from 0.72 to 0.29 years) Institute alternatives that reduce admissions by 50% (1,204 fewer people admitted) 	6.70% reduction (1,378 fewer people)	White: 0.6% decrease Black: 1.7% increase Hispanic/Latino: 3.8% increase Native American: 10.5% decrease Asian: 3.8% increase Other: 0.2% decrease	\$38,584,340
Other property offenses*****	<ul style="list-style-type: none"> Reduce average time served by 60% (from 0.72 to 0.29 years) Institute alternatives that reduce admissions by 20% (545 fewer people admitted) 	6.49% reduction (1,334 fewer people)	White: 1.2% decrease Black: 3.6% increase Hispanic/Latino: 4.3% increase Native American: 6.9% increase Asian: 0.9% increase Other: 1.0% increase	\$34,695,626

Impact Compared to 2025 Baseline*				
Offense category**	Policy outcome	Prison population impact	Impact on racial and ethnic makeup of population***	Cost savings****
Robbery	<ul style="list-style-type: none"> Reduce average time served by 50% (from 3.15 to 1.57 years) Institute alternatives that reduce admissions by 15% (116 fewer people admitted) 	6.31% reduction (1,298 fewer people)	White: 2.1% increase Black: 6.6% decrease Hispanic/Latino: 0.8% decrease Native American: 6.1% decrease Asian: 0.6% decrease Other: 2.9% decrease	\$28,811,513
Assault	<ul style="list-style-type: none"> Reduce average time served by 50% (from 1.81 to 0.90 years) Institute alternatives that reduce admissions by 20% (116 fewer people admitted) 	3.10% reduction (637 fewer people)	White: 0.4% increase Black: 1.1% decrease Hispanic/Latino: 2.1% decrease Native American: 3.2% increase Asian: 1.0% increase Other: 0.9% decrease	\$15,872,445
Fraud	<ul style="list-style-type: none"> Reduce average time served by 50% (from 0.61 to 0.31 years) Institute alternatives that reduce admissions by 30% (274 fewer people admitted) 	1.77% reduction (364 fewer people)	White: 0.3% decrease Black: 0.8% increase Hispanic/Latino: 1.1% increase Native American: 4.1% decrease Asian: 1.8% increase Other: No change	\$10,039,779
Weapons offenses*****	<ul style="list-style-type: none"> Reduce average time served by 50% (from 1.28 to 0.64 years) 	1.52% reduction (312 fewer people)	White: 0.5% increase Black: 1.6% decrease Hispanic/Latino: 0.4% decrease Native American: 1.5% increase Asian: 1.5% increase Other: 0.7% increase	\$7,350,083

*The baseline refers to the projected prison population based on historical trends, assuming that no significant policy or practice changes are made.

**The projections in this table are based on the offense that carries the longest sentence for any given prison term. People serving prison terms may be convicted of multiple offenses in addition to this primary offense, but this model categorizes the total prison term according to the primary offense only.

***This column represents the percent change in the share of the prison population made up by each racial/ethnic group. It compares the proportion of the population made up by a group in the 2025 baseline prison population to the proportion of the population made up by that group when the reform scenario is applied. We then calculate the percent change between those two proportions. Racial and ethnic disproportionality is traditionally measured by comparing the number of people in prison – of a certain race – to the number of people in the state’s general population of that same race. For example, nationally, Black people comprise 13 percent of the population, while white people comprise 77 percent. Meanwhile, 35 percent of people in state or federal prison are Black, compared to 34 percent who are white. While the proportion of people in prison who are Black or white is equal, Black people are incarcerated at nearly three times their representation in the general population. This is evident in Kentucky, where Black people make up 21 percent of the prison population but constitute only 8 percent of the state’s total adult population.

****Note: Cost impact for each individual policy change represents the effect of implementing that change alone and in 2015 dollars. The combined cost savings from implementing two or more of these changes would be greater than the sum of their combined individual cost savings, since more capital costs would be affected by the population reductions.

*****Some public order offenses include drunk or disorderly conduct, escape from custody, obstruction of law enforcement, court offenses, failure to comply with sex offense registration requirements, prostitution, and stalking, as well as other uncategorized offenses.

*****Some other property offenses include stolen property trafficking, vandalism, property damage, criminal mischief, unauthorized vehicle use, and trespassing.

*****Some weapons offenses include unlawful possession, sale, or use of a firearm or other type of weapon (e.g., explosive device).

Total Fiscal Impact

If Kentucky were to implement reforms leading to the changes above, 10,317 fewer people would be in prison in Kentucky by 2025, a 50.18 percent decrease. This would lead to a total cost savings of \$807,742,658 by 2025. We suggest cost savings be reinvested in areas that all Kentuckians should have access to, such as education, substance use disorder treatment, and mental health services.

Methodology Overview

This analysis uses prison term record data from the National Corrections Reporting Program to estimate the impact of different policy outcomes on the size of Kentucky’s prison population, racial and ethnic representation in the prison population, and state corrections spending. First, trends in admissions and exit rates for each offense category in recent years are analyzed and projected out to estimate a baseline state prison population projection through 2025, assuming recent trends will continue. Then, a mathematical model is used to estimate how various offense-specific reform scenarios (for example, a 10 percent reduction in admissions for drug possession or a 15 percent reduction in length of stay for robbery) would change the 2025 baseline projected prison population. The model allows for reform scenarios to include changes

to the number of people admitted to prison and/or the average length of time served for specific offenses. The model then estimates the effect that these changes would have by 2025 on the number of people in prison, the racial and ethnic makeup of the prison population, and spending on prison. The analysis assumes that the changes outlined will occur incrementally and be fully realized by 2025.

All results are measured in terms of how outcomes under the reform scenario differ from the baseline projection for 2025. Prison population size impacts are measured as the difference between the 2025 prison population under the baseline scenario and the forecasted population in that year with the specified changes applied. Impacts on the racial and ethnic makeup of the 2025 prison population are measured by comparing the share of the prison population made up by a certain racial or ethnic group in the 2025 baseline population to that same statistic under the reform scenario and calculating the percent change between these two proportions. Cost savings are calculated by estimating the funds that would be saved each year based on prison population reductions relative to the baseline estimate, assuming that annual savings grow as less infrastructure is needed to maintain a shrinking prison population. Savings relative to baseline spending are calculated in each year between the last year of available data and 2025, and then added up to generate a measure of cumulative dollars saved over that time period.

Endnotes

- 1 U.S. Census Bureau, “Annual Estimates of the Resident Population by Sex, Age, Race, and Hispanic Origin for the United States and States,” 2017 population estimates; Kentucky Department of Corrections (KDOC), *Inmate Profiles* (June 2017).
- 2 Bureau of Justice Statistics (BJS), Corrections Statistical Analysis Tool.
- 3 KDOC, *Inmate Profiles* (2011-2018), <https://corrections.ky.gov/about/Pages/MonthlyReports.aspx>; For the purposes of this Blueprint, the “prison population” refers to all people incarcerated under the jurisdiction of the KDOC, which includes people in prisons in addition to some people in county jails and halfway houses.
- 4 Crime and Justice Institute, “Kentucky Prison Drivers: Kentucky Justice Reinvestment Work Group” (PowerPoint presentation, September 20, 2017), <http://www.cri.org/assets/2017/10/KY-Drivers-I-Final.pdf>. Offense breakdowns in this ACLU Smart Justice 50-State Blueprint are based on the most serious, or “controlling,” offense for which a person in prison is serving time. Some people in prison are serving time for multiple convictions and are categorized here only under the controlling offense types.
- 5 Crime and Justice Institute, “Kentucky Drivers II: Kentucky Justice Reinvestment Work Group” (PowerPoint presentation, October 11, 2017), http://www.cri.org/assets/2017/10/KY-Drivers-II-Presentation_Final.pdf.
- 6 Jails are typically designed to hold people who are awaiting trial and have not been found guilty of a crime – or those who are serving shorter sentences.
- 7 KDOC, *Inmate Profiles* (2011-2017), <https://corrections.ky.gov/about/Pages/MonthlyReports.aspx>.
- 8 KDOC, *Weekly Jail Population Report* (August 16, 2018), <https://corrections.ky.gov/about/Pages/WeeklyJailPopulationReports.aspx>.
- 9 KDOC, *Inmate Profiles* (June 2017), <https://corrections.ky.gov/about/Pages/MonthlyReports.aspx>.
- 10 K.R.S. § 532.020, <http://www.lrc.ky.gov/statutes/statute.aspx?id=20028>.
- 11 K.R.S. § 532.080, <http://www.lrc.ky.gov/statutes/statute.aspx?id=40921>.
- 12 KDOC, *2016 Annual Report*, <https://corrections.ky.gov/about/Documents/Research%20and%20Statistics/Annual%20Reports/2016%20Annual%20Report%20APPROVED.pdf>
- 13 National Association of State Budget Officers, State Expenditure Report series, <https://www.nasbo.org/reports-data/state-expenditure-report/state-expenditure-archives>.
- 14 Pretrial Justice Institute, “Why We Need Pretrial Reform,” <http://www.pretrial.org/the-problem>.
- 15 Secretary J. Michael Brown and Justice & Public Safety Committee, *Criminal Justice Reform: Review of Kentucky’s Criminal Justice System – Report to the Governor* (December 1, 2008), <https://justice.ky.gov/Documents/Statistical%20Analysis/2008%20JC%20Report.pdf>.
- 16 See, e.g., Southern Poverty Law Center, “Children Tried as Adults Face Danger, Less Chance for Rehabilitation,” October 30, 2014, <https://www.splcenter.org/news/2014/10/30/children-tried-adults-face-danger-less-chance-rehabilitation>; Human Rights Watch, *Branded for Life: Florida’s Prosecution of Children as Adults Under its “Direct File” Statute* (April 10, 2014), <https://www.hrw.org/report/2014/04/10/branded-life/floridas-prosecution-children-adults-under-its-direct-file-statute>.
- 17 See, e.g., K.R.S. § 645.025, <http://www.lrc.ky.gov/statutes/statute.aspx?id=20283>.
- 18 For the purposes of this Blueprint, the “prison population” refers to all people incarcerated under the jurisdiction of the KDOC, which includes people in prisons in addition to some people in county jails and halfway houses.
- 19 BJS, Corrections Statistical Analysis Tool.
- 20 KDOC, *Inmate Profiles* (2011-2018), <https://corrections.ky.gov/about/Pages/MonthlyReports.aspx>; KDOC, *2010 Annual Report*, <https://corrections.ky.gov/about/Documents/Research%20and%20Statistics/Annual%20Reports/2010%20Annual%20Report.pdf>.
- 21 BJS, Corrections Statistical Analysis Tool.
- 22 Prison admissions reflect the number of people entering Kentucky prisons in a given year, while the total prison population refers to the total number of people incarcerated at the end of each year (with the exception of 2017, which is drawn from June monthly report).
- 23 Crime and Justice Institute, “Kentucky Prison Drivers: Kentucky Justice Reinvestment Work Group” (PowerPoint presentation, September 20, 2017), <http://www.cri.org/assets/2017/10/KY-Drivers-I-Final.pdf>.
- 24 BJS, National Corrections Reporting Program, 2015; 11 percent of prior felony incarceration data missing in cited source, 61 percent reported prior felony incarceration.
- 25 Crime and Justice Institute, “Kentucky Drivers II: Kentucky Justice Reinvestment Work Group” (PowerPoint presentation, October 11, 2017), http://www.cri.org/assets/2017/10/KY-Drivers-II-Presentation_Final.pdf.
- 26 Jails are typically designed to hold people who are awaiting trial and have not been found guilty of a crime – or those who are serving shorter sentences.
- 27 KDOC, *Inmate Profiles* (2011-2018), <https://corrections.ky.gov/about/Pages/MonthlyReports.aspx>.
- 28 KDOC, *Weekly Jail Population Report* (August 16, 2018), <https://corrections.ky.gov/about/Pages/WeeklyJailPopulationReports.aspx>.
- 29 KDOC, *Inmate Profiles* (August 2018), <https://corrections.ky.gov/about/Pages/MonthlyReports.aspx>.
- 30 KDOC, *Weekly Jail Population Report* (June 15, 2017), <https://corrections.ky.gov/about/Documents/Research%20and%20Statistics/Weekly%20Jail%20Population%20Reports/2017/06/06-15-17.pdf>; KDOC, *Inmate Profiles* (August 2018), <https://corrections.ky.gov/about/Documents/Research%20and%20Statistics/Monthly%20Reports/Inmate%20Profile/2018/Inmate%20Profile%20%2008-2018.pdf>.
- 31 Vera Institute of Justice, *Incarceration Trends* (2015), <http://trends.vera.org/rates/kentucky?incarcerationData=all&incarceration=count>.
- 32 Exclusions include anyone charged with contempt of court, violation of probation or conditional discharge, violation of a condition of release, violation of a protective order, a DUI 1st offense with injuries or accident or any aggravated circumstance (other than refusal), a DUI 2nd or greater offense, a DUI on suspended license, or bail jumping, as well as anyone who has previously failed to appear for a charge. Additionally, if a pretrial officer has a reason to believe that extenuating factors exist that conflict with standard pretrial services, they may seek an exception through the Pretrial Services Executive Officer and judicial review.
- 33 The PSA Risk Assessment is a validated risk assessment tool used in Kentucky to determine a person’s likelihood to abscond or engage in criminal behavior, ranking that risk on a scale from 2 to 12 (low to high risk).
- 34 Supreme Court of Kentucky, Amended Order 2016-10, https://courts.ky.gov/courts/supreme/Rules_Procedures/201610.pdf.

- 35 BJS, National Corrections Reporting Program, 2015.
- 36 *Id.*
- 37 KDOC, *Inmate Profiles* (December 2011-June 2017), <https://corrections.ky.gov/about/Pages/MonthlyReports.aspx>. Note: Includes life and death sentences.
- 38 K.R.S. § 532.020, <http://www.lrc.ky.gov/statutes/statute.aspx?id=20028>.
- 39 K.R.S. § 439.3401, <http://www.lrc.ky.gov/statutes/statute.aspx?id=44015>.
- 40 K.R.S. § 532.080, <http://www.lrc.ky.gov/statutes/statute.aspx?id=40921>.
- 41 KDOC, *2016 Annual Report*, <https://corrections.ky.gov/about/Documents/Research%20and%20Statistics/Annual%20Reports/2016%20Annual%20Report%20APPROVED.pdf>.
- 42 K.R.S. § 532.080, <http://www.lrc.ky.gov/statutes/statute.aspx?id=40921>.
- 43 U.S. Census Bureau, “Annual Estimates of the Resident Population by Sex, Age, Race, and Hispanic Origin for the United States and States,” 2017 population estimates.
- 44 Kentucky State Police, *Crime in Kentucky – 2016*, http://ksponline.org/pdf/cik_2016.pdf.
- 45 KDOC, *Inmate Profiles* (2017), <https://corrections.ky.gov/about/Pages/MonthlyReports.aspx>.
- 46 Urban Institute analysis of: U.S. Census Bureau, “Annual Estimates of the Resident Population by Sex, Age, Race, and Hispanic Origin for the United States and States,” 2017 population estimates; KDOC, *Inmate Profiles* (2017), <https://corrections.ky.gov/about/Pages/MonthlyReports.aspx>.
- 47 Ashley Nellis, *The Color of Justice: Racial and Ethnic Disparity in State Prisons* (Washington, D.C.: Sentencing Project, 2016), <https://www.sentencingproject.org/wp-content/uploads/2016/06/The-Color-of-Justice-Racial-and-Ethnic-Disparity-in-State-Prisons.pdf>.
- 48 James Mayse, “Jails struggle with number of mentally ill inmates,” *Kentucky New Era*, March 8, 2016, http://www.kentuckynewera.com/news/ap/article_011cd5d0-e4e3-11e5-b532-bb104143910f.html.
- 49 Human Rights Watch, *Old Behind Bars: The Aging Prison Population in the United States* (2012), https://www.hrw.org/sites/default/files/reports/usprisons0112webwcover_0.pdf.
- 50 KDOC, *Inmate Profiles* (2011-2017), <https://corrections.ky.gov/about/Pages/MonthlyReports.aspx>.
- 51 E. Ann Carson, *Prisoners in 2016* (BJS, January 9, 2018), <https://www.bjs.gov/index.cfm?ty=pbdetail&iid=6187>.
- 52 KDOC, *Inmate Profiles* (2011-2017), <https://corrections.ky.gov/about/Pages/MonthlyReports.aspx>.
- 53 KDOC, *Statewide Population Report* (July 11, 2017), <https://corrections.ky.gov/about/Documents/Research%20and%20Statistics/Daily%20Count%20Sheet/2017/07/07-11-17.pdf>.
- 54 Jason Riley, “Sunday Edition: Kentucky jails, prisons taking steps to curb solitary confinement,” *WDRB.com*, Sunday, July 19, 2015, <http://www.wdrb.com/story/29575644/sunday-edition-kentucky-jails-prisons-taking-steps-to-curb-solitary-confinement>.
- 55 James Mayse, “Jails struggle with number of mentally ill inmates,” *Kentucky New Era*, March 8, 2016, http://www.kentuckynewera.com/news/ap/article_011cd5d0-e4e3-11e5-b532-bb104143910f.html.
- 56 KDOC, *Annual Report 2017*, <https://corrections.ky.gov/about/Documents/Research%20and%20Statistics/Annual%20Reports/2017%20Annual%20Report.pdf>.
- 57 National Association of State Budget Officers, State Expenditure Report series, <https://www.nasbo.org/reports-data/state-expenditure-report/state-expenditure-archives>.
- 58 U.S. Census Bureau, QuickFacts: Kentucky, <https://www.census.gov/quickfacts/geo/chart/ky/IPE120216> (showing Kentucky as the highest state with percent of persons in poverty at 18.5 percent).
- 59 Danielle Sered, *Accounting for Violence: How to Increase Safety and Break Our Failed Reliance on Mass Incarceration* (New York: Vera Institute of Justice, 2017), https://storage.googleapis.com/vera-web-assets/downloads/Publications/accounting-for-violence/legacy_downloads/accounting-for-violence.pdf.
- 60 Juleyka Lantigua-Williams, “Why Poor, Low-Level Offenders Often Plead to Worse Crimes,” *The Atlantic*, July 24, 2016, <https://www.theatlantic.com/politics/archive/2016/07/why-pretrial-jail-can-mean-pleading-to-worse-crimes/491975/>.
- 61 Juleyka Lantigua-Williams, “Why Poor, Low-Level Offenders Often Plead to Worse Crimes,” *The Atlantic*, July 24, 2016, <https://www.theatlantic.com/politics/archive/2016/07/why-pretrial-jail-can-mean-pleading-to-worse-crimes/491975/> (interview); Megan Stevenson, *Distortion of Justice: How the Inability to Pay Bail Affects Case Outcomes*, University of Pennsylvania (January 8, 2017), <https://www.law.upenn.edu/cf/faculty/mstevens/workingpapers/Stevenson%20Job%20Market%20Paper%20Jan%202016.pdf> (study the interview is referring to).
- 62 Pretrial Justice Institute, “Why We Need Pretrial Reform,” <http://www.pretrial.org/the-problem>.
- 63 Mark S. Umbreit, Robert B. Coates, & Betty Vos, “Victim-Offender Mediation: Three Decades of Practice and Research,” *Conflict Resolution Quarterly*, 22, nos. 1-2 (2004), 279-303 and National Council on Crime & Delinquency, *Scaling Restorative Community Conferencing Through a Pay for Success Model: A Feasibility Assessment Report* (Oakland, CA: NCCD, 2015), 9.
- 64 Research gate, https://www.researchgate.net/publication/271659858_Short-term_effects_of_restorative_justice_conferences_on_post-traumatic_stress_symptoms_among_robbery_and_burglary_victims_a_randomized_controlled_trial.
- 65 Henry J. Steadman and Michelle Naples, “Assessing the Effectiveness of Jail Diversion Programs for Persons with Serious Mental Illness and Co-Occurring Substances Use Disorders,” *Behavioral Sciences & the Law* 23, no. 2 (March/April 2005): 163-170, <https://doi.org/10.1002/bsl.640>.
- 66 Nahama Broner, Alexander Cowell, and Randolph Dupont, “The Cost-Effectiveness of Criminal Justice Diversion Programs for People with Serious Mental Illness Co-Occurring with Substance Abuse,” *Journal of Contemporary Criminal Justice* 20, no. 3 (2004): 292-315.
- 67 Henry J. Steadman, Lisa Callahan, Pamela Clark Robbins, Roumen Vesselinov, Thomas G. McGuire, and Joseph P. Morrissey, “Criminal Justice and Behavioral Health Care Costs of Mental Health Court Participants: A Six-Year Study,” *Psychiatric Services* 65, no. 9 (September 2014): 1100-1104, <https://doi.org/10.1176/appi.ps.201300375>.
- 68 Department of Public Advocacy, “Alternative Sentencing Workers,” https://dpa.ky.gov/who_we_are/ASW/Pages/default.aspx.
- 69 See, e.g., Southern Poverty Law Center, “Children Tried as Adults Face Danger, Less Chance for Rehabilitation,” October 30, 2014, <https://www.splcenter.org/news/2014/10/30/children-tried-adults-face-danger-less-chance-rehabilitation>; Human Rights Watch, *Branded for Life: Florida’s Prosecution of Children as Adults Under its “Direct File” Statute* (April 10, 2014), <https://www.hrw.org/report/2014/04/10/branded-life/floridas-prosecution-children-adults-under-its-direct-file-statute>.
- 70 See, e.g., K.R.S. § 635.020, <http://www.lrc.ky.gov/statutes/statute.aspx?id=20282>; K.R.S. § 645.025, <http://www.lrc.ky.gov/statutes/statute.aspx?id=20283>.

- 71 K.R.S. § 500.050(1), <http://www.lrc.ky.gov/statutes/statute.aspx?id=19639>.
- 72 Secretary J. Michael Brown and Justice & Public Safety Committee, *Criminal Justice Reform: Review of Kentucky's Criminal Justice System – Report to the Governor* (December 1, 2008), <https://justice.ky.gov/Documents/Statistical%20Analysis/2008%20CJC%20Report.pdf>.
- 73 Seth Jacob Prins and Laura Draper, *Improving Outcomes for People with Mental Illnesses under Community Corrections Supervision: A Guide to Research-Informed Policy and Practice* (CSG Justice Center, 2009), <https://info.nicic.gov/nicrp/system/files/023634.pdf> at 1, 10, 17.
- 74 Matthew R. Durose, Alexia D. Cooper, and Howard N. Snyder, *Recidivism of Prisoners Released in 30 States in 2005: Patterns from 2005 to 2010* (BJS, April 2014), <https://www.bjs.gov/content/pub/pdf/rprts05p0510.pdf>.
- 75 See, e.g., K.R.S. HB333 (2017), SB210 (2018), HB169 (2018).
- 76 Marella Gayla, “What’s the Punishment for Theft? Depends On What State You’re In,” *Marshall Project*, August 9, 2017, <https://www.themarshallproject.org/2017/08/09/what-s-the-punishment-for-theft-depends-on-what-state-you-re-in>.
- 77 See, e.g., K.R.S. § 439.3401, <http://www.lrc.ky.gov/statutes/statute.aspx?id=47939>.
- 78 K.R.S. § 532.080, <http://www.lrc.ky.gov/statutes/statute.aspx?id=40921>.
- 79 Paul Robinson, “The Rise and Fall and Resurrection of American Criminal Codes,” *University of Louisville Law Review* 53 (2010): 173, 180.
- 80 Jeffery Ulmer and Darrell Steffensmeier, “23: The Age and Crime Relationship: Social Variation, Social Explanations” (2014): 382, https://www.sagepub.com/sites/default/files/upm-binaries/60294_Chapter_23.pdf.
- 81 Tina Maschi, Alexandra Kalmanofsky, Kimberly Wescott, and Lauren Pappacena, *Analysis of United States Compassionate and Geriatric Release Laws: Towards a Rights Based Response for Diverse Elders and Their Families and Communities* (New York: Be the Evidence Press, 2015): 10, <https://www.prisonlegalnews.org/media/publications/Analysis%20of%20United%20States%20Compassionate%20and%20Geriatric%20Release%20Laws,%20Be%20the%20Evidence%20Press,%202015.pdf>.
- 82 Kentucky HB 528 (2012), <http://www.lrc.ky.gov/record/12rs/HB528.htm>.
- 83 K.R.S. § 532.245, <http://www.lrc.ky.gov/statutes/statute.aspx?id=40925>.
- 84 See, for example, Katherine B. Spencer, Amanda K. Charbonneau, and Jack Glaser, “Implicit Bias and Policing,” *Social and Personality Psychology Compass* 10/1 (2016): 50–63, 10.1111/spc3.12210. Accessed from <https://gspp.berkeley.edu/assets/uploads/research/pdf/SpencerCharbonneauGlaser.Compass.2016.pdf>; Besiki Kutateladze, Vanessa Lynn, and Edward Liang, *Do Race and Ethnicity Matter in Prosecution? A Review of Empirical Studies* (New York: Vera Institute of Justice, June 2012), https://storage.googleapis.com/vera-web-assets/downloads/Publications/do-race-and-ethnicity-matter-in-prosecution-a-review-of-empirical-studies/legacy_downloads/race-and-ethnicity-in-prosecution-first-edition.pdf; Tushar Kansal, *Racial Disparity in Sentencing: A Review of the Literature*, ed. Marc Maurer (Washington, D.C.: Sentencing Project, January 2005), <https://www.opensocietyfoundations.org/sites/default/files/disparity.pdf>; see, for example, Michael Pinard, “Collateral Consequences of Criminal Convictions: Confronting Issues of Race and Dignity,” *New York University Law Review* 85, no. 2 (2010): 457-534; Lisa Stolzenberg, Stewart J. D’Alessio, and David Eitle, “Race and Cumulative Discrimination in the Prosecution of Criminal Defendants,” *Race and Justice* 3, no. 4 (2013), p. 275, <http://raj.sagepub.com/content/3/4/275.abstract>.
- 85 Department of Juvenile Justice, *Fiscal Year 2016 Annual Report* (February 10, 2017), 27, <https://djj.ky.gov/SiteAssets/Pages/default/DJJ%20Annual%20Report%20FY%202016.pdf>.
- 86 Crime and Justice Institute, “SB 200 Performance Measurement Data” (PowerPoint presentation, November 2017), 19, <https://www.documentcloud.org/documents/4523934-KY-SB200-Performance-Measures-FY-17.html#document/p19/a430675> (showing higher proportion of Black youth represented among youth not receiving diversion as compared to diverted youth).
- 87 Marc Maurer and Nazgol Ghandnoosh, *Fewer Prisoners, Less Crime: A Tale of Three States* (Washington, D.C.: Sentencing Project, 2015), <https://sentencingproject.org/wp-content/uploads/2015/11/Fewer-Prisoners-Less-Crime-A-Tale-of-Three-States.pdf>.
- 88 Ashley Nellis, *The Color of Justice: Racial and Ethnic Disparity in State Prisons* (Washington, D.C.: Sentencing Project, 2016), <https://www.sentencingproject.org/wp-content/uploads/2016/06/The-Color-of-Justice-Racial-and-Ethnic-Disparity-in-State-Prisons.pdf>.
- 89 Doris J. James and Lauren E. Glaze, *Special Report: Mental Health Problems of Prison and Jail Inmates* (BJS, September 2006), <https://www.bjs.gov/content/pub/pdf/mhppji.pdf>; Jennifer Bronson and Marcus Berzofsky, *Special Report: Indicators of Mental Health Problems Reported by Prisoners and Jail Inmates, 2011-12* (BJS, June 2017), <https://www.bjs.gov/content/pub/pdf/imhprj1112.pdf>; Jennifer Bronson, Laura M. Maruschak, and Marcus Berzofsky, *Special Report: Disabilities Among Prison and Jail Inmates, 2011-12* (BJS, December 2015), <https://www.bjs.gov/content/pub/pdf/dpji1112.pdf>.
- 90 Doris J. James and Lauren E. Glaze, *Special Report: Mental Health Problems of Prison and Jail Inmates* (BJS, September 2006), <https://www.bjs.gov/content/pub/pdf/mhppji.pdf>; Jennifer Bronson and Marcus Berzofsky, *Special Report: Indicators of Mental Health Problems Reported by Prisoners and Jail Inmates, 2011-12* (BJS, June 2017), <https://www.bjs.gov/content/pub/pdf/imhprj1112.pdf>.
- 91 Linda A. Teplin, *Keeping the Peace: Police Discretion and Mentally Ill Persons* (National Institute of Justice Journal, July 2000): 12, <https://www.ncjrs.gov/pdffiles1/jr000244c.pdf>.
- 92 Stanford Justice Advocacy Project, *The Prevalence and Severity of Mental Illness Among California Prisoners on the Rise* (2017), <https://law.stanford.edu/publications/the-prevalence-and-severity-of-mental-illness-among-california-prisoners-on-the-rise/>.
- 93 Stanford Justice Advocacy Project, *The Prevalence and Severity of Mental Illness Among California Prisoners on the Rise* (2017), <https://law.stanford.edu/publications/the-prevalence-and-severity-of-mental-illness-among-california-prisoners-on-the-rise/>.
- 94 *Id.*
- 95 Doris J. James and Lauren E. Glaze, *Special Report: Mental Health Problems of Prison and Jail Inmates* (BJS, September 2006), <https://www.bjs.gov/content/pub/pdf/mhppji.pdf>; Jennifer Bronson and Marcus Berzofsky, *Special Report: Indicators of Mental Health Problems Reported by Prisoners and Jail Inmates, 2011-12* (BJS, June 2017), <https://www.bjs.gov/content/pub/pdf/imhprj1112.pdf>.
- 96 Doris J. James and Lauren E. Glaze, *Special Report: Mental Health Problems of Prison and Jail Inmates* (BJS, September 2006), <https://www.bjs.gov/content/pub/pdf/mhppji.pdf>.
- 97 John Buntin, “Miami’s Model for Decriminalizing Mental Illness in America,” *Governing* (August 2015), <http://www.governing.com/topics/public-justice-safety/gov-miami-mental-health-jail.html>; Michael T. Compton, Roger Bakeman, Beth Broussard, Dana Hankerson-Dyson, Letheshia Husbands, Shaily Krishan, Tarianna Stewart-Hutto, Barbara D’Orio, Janet R. Oliva, Nancy J. Thompson, and Amy Watson, “The Police-Based Crisis Intervention Team (CIT) Model: II. Effects on Level of Force and Resolution, Referral, and Arrest,” *Psychiatric Services* 65, no. 4 (2014), <https://doi.org/10.1176/appi.ps.201300108>; see also, Michael T. Compton, Masuma Bahora, Amy C. Watson, and Janet R. Oliva, “A Comprehensive Review of Extant Research on Crisis Intervention Team (CIT) Programs,” *Journal of American Academy of Psychiatry Law* 36, no. 1 (2008).
- 98 Alexander, Michelle. *The New Jim Crow : Mass Incarceration in the Age of Colorblindness*. New York : [Jackson, Tenn.] :New Press ; Distributed by Perseus Distribution, 2010. Print.

