

*Blueprint for Smart Justice*  
**Maryland**





# Blueprint *for* Smart Justice Maryland

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# 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 substance use disorder, mental illness, and poverty. 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 undermined American values, damaged families and communities, exacerbated racial inequality, 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 end its reliance on incarceration, invest instead in alternatives to incarceration and in 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 by half the number of people in prison in every state and reduce racial disparities in incarceration. In each 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 Maryland – which had the highest proportion of Black people in prison in the country in 2014,<sup>1</sup> and where Black people represented 70 percent of the prison population despite comprising only 31 percent of the overall state population in 2016<sup>2</sup> – 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, law enforcement officials, prosecutors, and communities in Maryland and across the nation to focus on efforts that are specific to combatting these disparities, like reducing incarceration before trial through bail reform, preventing the incarceration of people arrested on misdemeanor and low-level felony charges, and implementing parole reform.

In Maryland, the prison population has more than doubled since 1980,<sup>3</sup> and as of 2016 there were 20,374 people imprisoned in the state.<sup>4</sup> Progress has been made in recent years to reduce admissions into the prison system – the state achieved a 43 percent decline in the number of people entering prison for a new sentence between 2005 and 2016 – and this decrease was driven primarily by a drop in the number of people sent to prison from Baltimore City.<sup>5</sup> Still, drug offenses<sup>6</sup> accounted for nearly one in five admissions for new offenses in 2016.<sup>7</sup> And in the past decade, the proportion of admissions accounted for by people sent to prison for a violation of parole or mandatory supervision has increased, accounting for nearly one in three prison admissions in 2016.<sup>8</sup> As of 2015, there were

9,554 people incarcerated in local jails in Maryland — 65 percent of whom were awaiting trial and had not been convicted of a crime.<sup>9</sup>

Since 2005, the average amount of time people serve in Maryland prisons has grown by 34 percent, reaching 6.5 years in 2016.<sup>10</sup> And between 2005 and 2014, there was a 34 percent increase<sup>11</sup> in the average time served at release for public order offenses like disorderly conduct and public drunkenness, along with a 25 percent increase for probation revocations.<sup>12</sup> The state also has harsh sentencing enhancements for people convicted of certain crimes upon subsequent offenses.<sup>13</sup>

Maryland's overreliance on incarceration as a means to address its social issues has had a particularly disparate impact on people of color. In fact, in 2014, the state had the highest proportion of Black people in prison in the country,<sup>14</sup> and one in 41 Black men in Maryland was in prison.<sup>15</sup> In the same year, the imprisonment rate of Black people was nearly five times the imprisonment rate of white people. Because Latinx people who are incarcerated can be counted as white in Maryland,<sup>16</sup> it is possible that the Black/white racial disparity is even higher than it's currently measured to be.<sup>17</sup> People with disabilities also suffer in Maryland's prison and jail systems — as of 2016, 69 percent of people in Maryland jails were estimated to have a diagnosed substance use disorder,<sup>18</sup> and 39 percent of the local jail population was estimated to have been diagnosed with a mental health disorder.<sup>19</sup>

And all this incarceration is expensive. Although the Governor's fiscal 2018 budget plan does include a small decrease in general fund corrections spending due to savings produced from Justice Reinvestment,<sup>20</sup> Maryland spent a staggering \$1.4 billion of its general fund on corrections in 2016.<sup>21</sup>

So, what's the path forward?

If Maryland were to adopt the reforms listed in this Smart Justice 50-State Blueprint, it could achieve a dramatic reduction in its prison population. This would require the implementation of alternative-to-incarceration programs that offer support services such as mental health care, employment, substance use disorder treatment, housing, health care, and vocational training. The state would also have to

decriminalize possession with the intent to distribute for people who are not high-volume drug traffickers. In addition, mental health diversion programs would help keep disabled people out of prison and can strengthen their connections to community-based services. The Legislature should also limit the circumstances in which a judge is required to impose a prison sentence instead of community supervision, especially for drug offenses or situations where the mandatory prison sentence would be triggered by a prior felony. Taking decision-making over sentences out of the hands of legislators and putting it into those of judges, where it belongs, could help to broaden the options available to judges other than incarceration.

Amending Maryland's criminal code to reduce sentencing ranges, including and especially for drug offenses, burglary, and other property offenses, would also help reduce the size of the state's costly prison population. Cutting penalty lengths for theft offenses and creating mechanisms that can modify the sentences of people serving 10 years or more, based on institutional adjustment and good behavior, would also help shrink that population. In addition, parole reform is a critical component of a successful effort to get to a 50 percent reduction. Right now, Maryland requires that people sentenced to prison serve at least half of their minimum time served — returning to a 25 percent minimum time served requirement for crimes of violence would give greater flexibility to the Maryland Parole Commission to get people spending unnecessarily long stints in prison back into their communities and with their families. Ending incarceration for technical violations of parole and probation sentences would also greatly reduce the number of people entering prison every year.

By adopting these and other reforms laid out in this report, Maryland could save nearly \$1.5 billion dollars by 2025 — money that could be spent on schools, infrastructure, and services for Marylanders, or simply given back in the form of tax breaks.

The answer is ultimately up to Maryland's voters, policymakers, communities, and criminal justice reform advocates as they move forward with the urgent work of ending Maryland's obsession with mass incarceration.

# The State of the Maryland Prison System

Maryland’s prison population grew by 159 percent between 1980 and 2016, peaking in 2002 at 24,162 people.<sup>22</sup> The number of women imprisoned in Maryland has grown at a faster rate than that of the total population, increasing by 259 percent over the same time period.<sup>23</sup> As of 2016, 20,374 people were imprisoned in the state,<sup>24</sup> meaning that 332 out of every 100,000 Maryland residents was in prison.<sup>25</sup>

If you include people in local jails and under community supervision, such as parole and probation, the reach of the criminal justice system is even greater. In 2016, approximately 99,000 people were under correctional control in Maryland, accounting for more than 2 percent of adult Maryland residents.<sup>26</sup>

## AT A GLANCE

### MARYLAND PRISONS\*

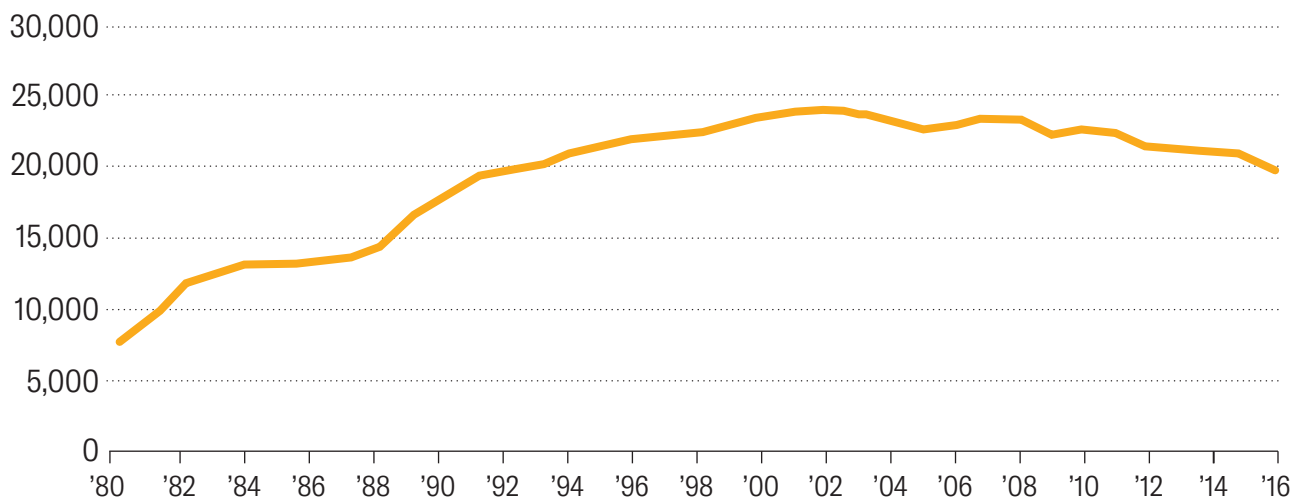
Maryland’s prison population grew by **213 percent** between 1980 and 2002.

**20,374** people were imprisoned in Maryland in 2016.

Approximately **99,000** people were under correctional control in Maryland in 2016.

\* Note: This Smart Justice 50-State Blueprint focuses on Maryland’s prison population and (for the most part) excludes the local jail populations. In Maryland, the local jail population accounted for approximately 30 percent of the total incarcerated population in 2016. Danielle Kaeble and Mary Cowhig, *Correctional Populations in the United States, 2016* (BJS, April 26, 2018), <https://www.bjs.gov/index.cfm?ty=pbdetail&iid=6226>; E. Ann Carson, *Prisoners in 2016* (BJS, January 9, 2018), <https://www.bjs.gov/index.cfm?ty=pbdetail&iid=6187>.

## MARYLAND PRISON POPULATION



## What Is Driving People Into Prison?<sup>27, 28</sup>

A litany of offenses drives people into Maryland’s prisons. Despite decreasing by 74 percent since 2005, admissions for drug offenses accounted for nearly one in five (19 percent) admissions for new offenses in 2016.<sup>29</sup> In addition, 12 percent of people admitted for new offenses had been sentenced for robbery – an increase of 6 percent between 2005 and 2016.<sup>30</sup> Other common offenses for new prison admissions in 2016 were assault (18 percent), theft (8 percent), burglary (7 percent), and weapons offenses (4 percent).<sup>31</sup>

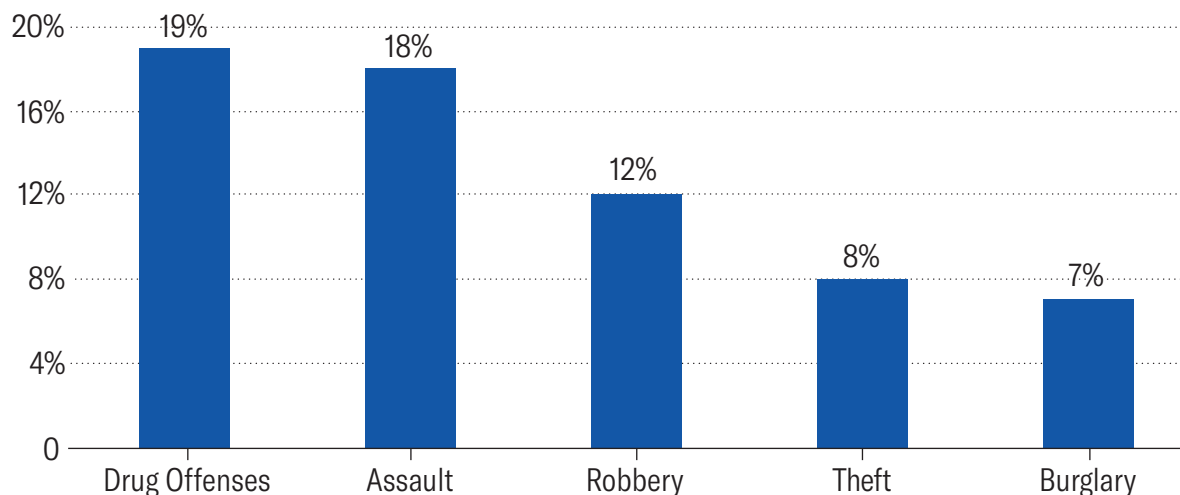
Maryland has made incremental progress toward reducing admissions in the prison system. The number of people entering Maryland prisons every year for a new offense decreased by 43 percent between 2005 and 2016. This decrease in new prison admissions can largely be attributed to Baltimore City, where the annual number of people sent to prison for a new sentence has dropped by nearly 60 percent – from 7,328 in 2005 to 2,993 in 2016. Admissions for new offenses from all other jurisdictions remained relatively constant over the same time period.<sup>32</sup> The significant drop in the number of people admitted to prison from Baltimore City was primarily driven by decreases in admissions for drug offenses and probation revocations.<sup>33</sup>

Despite these positive changes, admissions to prison from Baltimore City still accounted for nearly half (46 percent) of all new commitments to Maryland prisons in 2016.<sup>34</sup>

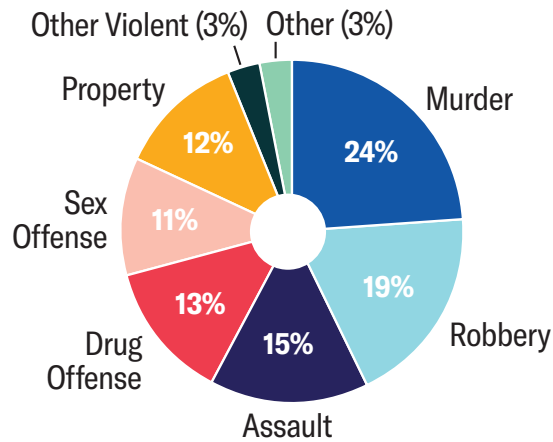
While prison admissions have decreased between 2005 and 2016, the proportion of people sent to prison for a violation of parole or mandatory supervision has climbed.<sup>35</sup> In 2005, people sent to prison from parole and mandatory supervision accounted for one in five (22 percent) admissions. In 2016, they accounted for one in three (32 percent) prison admissions.<sup>36</sup> In 2014, technical violations – breaking the rules of supervision but not breaking the law through behaviors like missing a curfew or not having employment – accounted for nearly three-quarters of people returning to prison from parole or mandatory release.<sup>37</sup> The Justice Reinvestment Act,<sup>38</sup> passed in 2016, attempted to address this by limiting the prison sentences that can be imposed for technical violations of supervision.<sup>39</sup>

Compounding matters, Maryland circuit court judges use a set of recommended guidelines to assign sentencing ranges for almost all crimes and are increasingly opting for incarceration over alternatives. In 2005, 67 percent of people sentenced under these guidelines were sentenced to a period of incarceration;

## MOST COMMON OFFENSES FOR NEW ADMISSIONS TO MARYLAND PRISONS (2016)



## MARYLAND PRISON POPULATION BY OFFENSE (2016)



by 2014, the percentage of people sentenced to incarceration had grown to 76 percent.<sup>40</sup>

Finally, the state offers some alternatives to incarceration for low-level offenses, including drug courts and mental health courts, but these resources are not accessible in all areas of the state. As of August 2018, five of Maryland's 24 jurisdictions did not have a mental health or drug court.<sup>41</sup>

## The Current Prison and Jail Population

Maryland incarcerates an estimated 9,554 people in local jails. Approximately 65 percent of those serving time in jail are awaiting trial and have not been convicted of a crime.<sup>42</sup> Between 1990 and 2015, the number of women incarcerated in Maryland local jails increased by 31 percent.<sup>43</sup>

In addition to Maryland's local jail population, as of 2016 the state imprisons over 20,000 people in its prisons.<sup>44</sup> People serving time for drug offenses accounted for one in eight people (13 percent) in those prisons in 2016.<sup>45</sup> Other common offenses included robbery (19 percent) and assault (15 percent). Between 2005 and 2016, the number of people serving time for burglary offenses increased by 23 percent — accounting for 8 percent of the 2016 prison population. In addition, the number of people imprisoned for forgery offenses nearly tripled over the same time period.<sup>46</sup>

## Why Do People Stay in Prison for So Long?

Between 2005 and 2016, the average sentence length for people in Maryland prisons rose by 23 percent — increasing from nearly 14 years in 2005 to 17 years in 2016.<sup>47</sup> Over the same time period, the number

### AT A GLANCE

## MARYLAND PRISON POPULATION

**9,554** people were incarcerated in local jails in Maryland as of 2015.

**65 percent** of people in local jails had not been convicted of a crime as of 2015.

**13 percent** of Maryland's prison population in 2016 had been convicted of a drug offense.

**19 percent** of Maryland's prison population in 2016 had been convicted of robbery.

of people serving sentences of more than 10 years increased by 16 percent, resulting in three out of five people (61 percent) serving a sentence longer than 10 years in 2016.<sup>48</sup> That same year, 12 percent of people in Maryland prisons were serving life sentences.<sup>49</sup>

Since 2005, the average amount of time people serve in Maryland prisons has grown by 33 percent, reaching 6.5 years in 2016.<sup>50</sup> Between 2005 and 2014, the average time served at the time of release for new court commitments increased by 30 percent, including a 34 percent increase for public order offenses like disorderly conduct and public drunkenness. The average amount of time people serve for probation revocations increased by 25 percent over the same time period.<sup>51</sup>

Parole releases made up less than 40 percent of all releases from Maryland prisons in 2014. In addition, people released on parole in 2014 served an average of nine months in prison beyond the date they were first eligible for release.<sup>52</sup> A 2015 report from the Maryland Justice Reinvestment Coordinating Council attributed these extended prison terms to multiple factors, including delays in receiving programming such as educational classes or substance use treatment in prison.<sup>53</sup>

Maryland has harsh sentencing enhancements for people convicted of certain crimes as subsequent offenses. Some enhancements provide for increased statutory maximum penalties and others require mandatory minimum sentences.<sup>54</sup> These laws lead to a growing prison population as many people who might otherwise be returned to their communities stay in prison for years, if not decades.

## Who Is Imprisoned

**Black Marylanders:** According to the most recent available national data (2014), Maryland has the highest proportion of Black people in prison in the country.<sup>55</sup> In 2016, the percentage of the Maryland prison population that was Black (70 percent) was more than double the percentage of Black people in the state population (31 percent).<sup>56</sup> In 2014, one in 41 Black men in Maryland was in prison.<sup>57</sup>

### AT A GLANCE

## LENGTH OF IMPRISONMENT

The average amount of time people in Maryland prisons have served increased by **33 percent** between 2005 and 2016.

People serving life sentences made up **12 percent** of the Maryland prison population in 2016.

People imprisoned in Maryland had served an average of **6.5 years** in 2016.

**Latinx Marylanders:** Publicly available data on the Maryland prison population does not account for the Latinx population. Even worse, Latinx persons can be designated as “white,” which misrepresents the demographic makeup of the prison population and can undervalue the racial disparity between Black and white prison populations. If Latinx people who are incarcerated are counted as “white,” it inflates the actual number of white people who are incarcerated by including people who are not white. As of 2014, Maryland is one of only four states that collect data in this way. In the same year, the imprisonment rate of Black people was almost five times the imprisonment rate of white people, although it is possible that these statistics actually understate that disparity because of the inaccurate designation of Latinx people as “white.”<sup>58</sup>

**Marylanders With Disabilities:** A survey of a number of local jails in Maryland in 2016 estimated that 69 percent of people in Maryland jails had a diagnosed substance use disorder and an estimated 39 percent of people in Maryland jails had a diagnosed mental health disorder.<sup>59</sup> In Maryland prisons, an estimated 32 percent of the population has “serious drug-related problems” and an estimated 24.5 percent of the prison population has been diagnosed with a mental illness.<sup>60</sup>

**Female Marylanders:** Between 1980 and 2016, the number of women in Maryland prisons grew by 259

## AT A GLANCE

### DEMOGRAPHICS

Maryland ranked **first** in the country for the proportion of Black people imprisoned in 2014.

**1 in 41** Black men in Maryland was imprisoned in 2014.

An estimated **69 percent** of people in local jails have a diagnosed substance use disorder.

The number of people over age 50 in Maryland prisons increased **84 percent** between 2005 and 2016.

percent, increasing significantly faster than the general prison population, which grew by 159 percent over the same time period.<sup>61</sup> In 2016, at least half of all women admitted to Maryland prisons for a new offense had been convicted of a nonviolent offense, including 20 percent serving time for a drug offense and 17 percent serving time for theft.<sup>62</sup>

**Older Marylanders:** Maryland's prison population is rapidly aging. Between 2005 and 2016, the number of imprisoned people over the age of 50 increased by 84 percent.<sup>63</sup> As a result, the average age of Maryland's imprisoned population has increased by 6 percent — exceeding 37 years in 2016.<sup>64</sup> In 2016, one out of every six people imprisoned in Maryland was over the age of 50.<sup>65</sup> Research suggests that people older than 50 pose a negligible risk to public safety and are less likely to return to prison for new offenses upon release.<sup>66</sup>

## AT A GLANCE

### BUDGETS

Maryland spent more than **\$1.4 billion** of its general fund on corrections in 2016.

General fund corrections spending **nearly doubled** between 1985 and 2016.

### Budget Strains

As Maryland's imprisoned population has risen, so has the cost burden. Over the past two decades, the state has spent more than \$1 billion of its general fund every year on corrections — and these costs nearly doubled between 1985 and 2016.<sup>67</sup> In 2016, Maryland spent more than \$1.4 billion of its general fund on corrections.<sup>68</sup>

# Ending Mass Incarceration in Maryland: A Path Forward

There are many potential policy changes that can help Maryland end its mass incarceration crisis, but it will be up to the people and policymakers of Maryland 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 reduce the number of people entering prison in the first place.

## Reducing Admissions

To end mass incarceration, Maryland 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.<sup>69</sup> Here are some strategies:

- **Decriminalization:** Too often, Maryland relies on its criminal justice system to address behaviors and actions for which it is not well equipped or necessary to address. For example, lawmakers have long turned to jails and prisons to combat drug addiction. However, the criminal justice system cannot provide sufficient treatment to properly address it. Instead, lawmakers should treat addiction as a public health issue and prevent the further use of incarceration on those who need treatment instead. Maryland’s Legislature should decriminalize both drug possession and possession with the intent to distribute for people who are not high-volume drug traffickers.

Other offenses need not involve the criminal justice system – the Maryland Legislature should consider eliminating any offenses that would be better handled by other systems, including burglary in the fourth degree.

- **Alternatives to incarceration:** The good news is that alternatives exist. Several types of alternative-to-incarceration programs have shown great success in reducing criminal activity. Programs offering support services such as substance abuse treatment, mental health care, employment, housing, health care, and vocational training – often with some element of community service – have significantly reduced recidivism rates for participants. Other successful models include programs that divert people to treatment and support services before arrest and programs led by prosecutors that divert people before they are charged. Maryland’s Legislature should expand pre-arrest and pre-charging diversion from the criminal justice system for those who would be better served by the public health system, particularly for those accused of drug-related offenses. Judges should also use their discretion to offer treatment to defendants, rather than relying on incarceration. In addition, the Maryland Legislature should increase the availability of restorative justice to decrease the prison population.
- **Mental health 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.<sup>70</sup> When implemented effectively, diversion reduces arrests, encourages voluntary treatment in the community, and saves money.<sup>71</sup> 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.<sup>72</sup>

- **Sentencing reform:** The Maryland Legislature should also limit the circumstances in which a judge is required to impose a prison sentence instead of community supervision. In fact, in some cases, incarceration is too severe a response, and the court should presume community supervision or treatment, including for cases involving primary caregivers, second-degree assaults that amount to no more than a verbal threat, and drug and property offenses. Judges must have a variety of options at their disposal besides imprisonment, allowing them to offer treatment, mental health care, restorative justice, or other evidence-based alternatives to incarceration. These programs should be available to the court in all or most cases, regardless of the severity of the offense or someone’s prior criminal history. The court, not the Legislature, should be in a position to decide whether such an option is appropriate in individual cases.

## A Note on Specialty Courts

Many jurisdictions assign some people to “specialty courts” such as mental health, behavioral, veterans, and drug courts. The ACLU has concerns about the growing use of these courts. They may violate due process rights, including the rights to notice, hearing, and counsel, and they may needlessly subject people with disabilities to criminal justice control. And they

require significant resources that would be better spent providing upfront services in the community.

Where established, participation in these courts must be voluntary and not require a guilty plea. Specialty court providers must be disability-competent and informed in public health, addiction, and treatment. People in these courts must have access to counsel, and supervision should not last beyond the length of any sentence that would have been imposed for the underlying charge. Participants should be allowed to quit the program and either take a plea agreement or stand trial, protected by all due process rights, at any time. All programs must be tailored to meet individual needs, including having specialized, evidence-based options for people with dual diagnoses (mental health and substance use disorders). Finally, the response to lapses or noncompliance should be enhanced case management, not incarceration.

## Reducing Time Served

Reducing the length of time people spend in prison, even by just a few months, can lead to thousands of fewer people in Maryland’s prisons. Here’s how:

- **Sentencing reform:** The Legislature can amend Maryland’s criminal code to reduce sentencing ranges to more appropriate levels. This includes, but is not limited to, adjusting drug offense maximums down significantly, misdemeanor theft to a maximum of 90 days, felony theft and second-degree assault involving physical assault down by 75 percent, and capping all offenses not involving violence at 18 months of imprisonment. Further, the Maryland Legislature should eliminate all mandatory minimums, escalating penalties for subsequent offenses, and “felony murder” as an offense so that it cannot trigger mandatory life imprisonment. It should also limit the imposition of consecutive sentences for multiple offenses and establish a mechanism for sentencing modification for individuals who are serving sentences of at least 10 years

or under any mandatory minimums, based on institutional adjustment and good behavior.

- **Prison reform:** The Maryland Department of Public Safety and Correctional Services (DPSCS) should significantly increase its number of minimum and pre-release beds to reduce delays in the progression of people who are incarcerated to lesser security facilities and parole release. It should also increase job training, educational opportunities, and reentry planning to stem recidivism rates and to eliminate delays in the ability to access programming while incarcerated. By its own admission, the Maryland DPSCS faces a “staffing crisis.”<sup>73</sup> According to an internal budget overview, “As of January 1, 2017, DPSCS had 1,673 positions vacant, which equates to 15.3 percent of its authorized staff.”<sup>74</sup> This significantly undercuts the volume and quality of reentry services that can be provided to persons preparing for release, thereby undermining successful reentry and contributing to recidivism rates.
- **Earned time/earned credit reform:** Maryland should expand the availability of earned credits against a prison sentence through participation in educational, vocational, and other opportunities. Studies show that these programs reduce recidivism and, over time, decrease incarcerated populations and associated costs.<sup>75</sup> The first step: The Maryland Legislature should eliminate categorical bans on earning diminution credits in order to allow all people serving time behind bars the opportunity to earn credits towards their release. Further, it should expand work and educational programs to allow every eligible person to participate in order to earn those credits.
- **Parole reform:** Improving parole and release policies and practices to ensure that eligible people are paroled more quickly is another key way to reduce the amount of time people spend in prison. In Maryland, this means the Legislature should return to a 25 percent minimum time served requirement for crimes involving

violence, remove the gubernatorial approval requirement of parole for persons sentenced to life sentences, and reestablish work release programs for individuals serving life sentences. Further, the state should adopt a “presumptive parole” system — whereby a person is released on parole once eligible unless the parole board specifies a reason not to and makes it possible to challenge that denial decision. To allow victims who wish to participate more access, the parole board should also increase the availability of restorative justice practices to open those hearings. Lastly, the Maryland parole board should conduct a “second look” at all individuals serving parole-eligible life sentences.

- **Reducing parole revocations:** 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.<sup>76</sup> Parole and probation officers are required to provide reasonable accommodations so that people on parole 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. Incarceration for technical violations that do occur should be eliminated entirely.

## Reducing Racial Disparities

Reducing the number of people who are imprisoned in Maryland will not on its own significantly reduce racial disparities in the prison system.

People of color (especially Black, Latinx, and Native Americans) 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.<sup>77</sup> Focusing on only one of the factors that drives racial disparity does not address issues across the whole system.

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.<sup>78</sup> However, the state did not 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.<sup>79</sup>

Ending mass incarceration is critical to eliminating racial disparities but insufficient 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:

- Banning police searches based on the odor of marijuana
- Ending overpolicing in communities of color
- Evaluating prosecutors' charging and plea-bargaining practices to identify and eliminate bias

## TAKING THE LEAD

**Prosecutors:** They decide on 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 not 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, including diversion programs that provide supported housing, treatment, and vocational training. They can also decide to sufficiently fund mental health and substance abuse treatment so that it is available for people who need it before they encounter the criminal legal system.

**Parole boards:** They decide when to allow people to leave prison. In Maryland, the parole board is an especially important player when it comes to reforming how long people spend in prison. If the parole board is trained to consider and accommodate disability issues, it may recognize and release more people who have disciplinary issues in their records that are due to lack of disability accommodations during incarceration.

**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.

- Investing in community-based 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
- Addressing any potential racial bias in risk assessment instruments used to assist decision-making in the criminal justice system
- 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.<sup>80</sup> In particular, people with psychiatric disabilities are dramatically overrepresented in jails and prisons across the country.<sup>81</sup>

- People showing signs of mental illness are twice as likely to be arrested as people without mental illness for the same behavior.<sup>82</sup>
- People with mental illness are sentenced to prison terms that are, on average, 12 percent longer than those of other people in prison.<sup>83</sup>
- 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.<sup>84</sup>

Furthermore, sentencing reforms appear to leave people with psychiatric disabilities who are incarcerated behind. In recent years, the prison population in California 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.<sup>85</sup>

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.<sup>86</sup> 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. In Maryland, the shortage of staffing means that incarcerated people with mental illnesses are not getting the support or accommodations they need, which undoubtedly contributes to re-incarceration rates among this population.

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.<sup>87</sup> 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 have significantly reduced their jail populations.<sup>88</sup>
- 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 first and second 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 Maryland 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 the potential to reduce the prison population, as well as other factors. To chart your own path to reducing mass incarceration in Maryland, 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 ***
<b>Assault</b>	<ul style="list-style-type: none"> <li>Reduce average time served by 60% (from 1.38 to 0.55 years)</li> <li>Institute alternatives that reduce admissions by 50% (1,071 fewer people admitted)</li> </ul>	12.08% reduction (2,360 fewer people)	White: 0.2% decrease Black: No change Native American: 0.6% decrease Asian: 6.2% increase	\$118,360,373
<b>Robbery</b>	<ul style="list-style-type: none"> <li>Reduce average time served by 60% (from 2.26 to 0.90 years)</li> <li>Institute alternatives that reduce admissions by 50% (600 fewer people admitted)</li> </ul>	11.29% reduction (2,204 fewer people)	White: 3.1% increase Black: 1.2% decrease Native American: 0.7% increase Asian: 4.1% decrease	\$104,416,337
<b>Drug offenses</b>	<ul style="list-style-type: none"> <li>Institute alternatives that end all admissions for drug possession (509 fewer people admitted)</li> <li>Reduce average time served for drug distribution by 70% (from 1.39 to 0.42 years)</li> <li>Institute alternatives that reduce admissions for drug distribution by 60% (885 fewer people admitted)</li> </ul>	10.71% reduction (2,091 fewer people)	White: 6.7% increase Black: 2.7% decrease Native American: 9.2% increase Asian: 0.2% decrease	\$112,545,355
<b>Burglary</b>	<ul style="list-style-type: none"> <li>Reduce average time served by 60% (from 1.74 to 0.70 years)</li> <li>Institute alternatives that reduce admissions by 50% (525 fewer people admitted)</li> </ul>	7.44% reduction (1,454 fewer people)	White: 7.7% decrease Black: 3.1% increase Native American: 3.9% increase Asian: 6.6% decrease	\$69,424,274
<b>Theft</b>	<ul style="list-style-type: none"> <li>Reduce average time served by 70% (from 0.93 to 0.28 years)</li> <li>Institute alternatives that reduce admissions by 60% (546 fewer people admitted)</li> </ul>	3.81% reduction (744 fewer people)	White: 3.7% decrease Black: 1.5% increase Native American: 0.4% increase Asian: 4.0% increase	\$39,767,553

Impact Compared to 2025 Baseline*				
Offense category	Policy outcome	Prison population impact	Impact on racial and ethnic makeup of population**	Cost savings ***
<b>Weapons offenses****</b>	<ul style="list-style-type: none"> <li>Reduce average time served by 60% (from 1.23 to 0.49 years)</li> </ul>	2.45% reduction (479 fewer people)	White: 1.9% increase Black: 0.7% decrease Native American: No change Asian: 0.9% decrease	\$21,447,110
<b>Public order offenses*****</b>	<ul style="list-style-type: none"> <li>Reduce average time served by 70% (from 0.46 to 0.14 years)</li> <li>Institute alternatives that reduce admissions by 60% (486 fewer people admitted)</li> </ul>	1.67% reduction (326 fewer people)	White: 0.5% decrease Black: 0.2% increase Native American: 2.4% decrease Asian: 1.7% increase	\$17,041,020
<b>Other property offenses*****</b>	<ul style="list-style-type: none"> <li>Reduce average time served by 70% (from 0.69 to 0.21 years)</li> <li>Institute alternatives that reduce admissions by 60% (76 fewer people admitted)</li> </ul>	0.39% reduction (76 fewer people)	White: No change Black: No change Native American: 0.4% increase Asian: 0.4% increase	\$4,095,500
<b>Fraud</b>	<ul style="list-style-type: none"> <li>Reduce average time served by 70% (from 0.80 to 0.24 years)</li> <li>Institute alternatives that reduce admissions by 60% (58 fewer people admitted)</li> </ul>	0.35% reduction (68 fewer people)	White: 0.2% decrease Black: No change Native American: 3.6% decrease Asian: 0.3% increase	\$3,555,090

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

\*\*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 Maryland, where Black people make up 70 percent of the prison population but constitute only 31 percent of the state’s total population.

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

\*\*\*\*\*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.

## Total Fiscal Impact

If Maryland were to carry out reforms leading to the changes above, 9,802 fewer people would be in prison in Maryland by 2025, a 50.19 percent decrease. This would lead to a total cost savings of \$1,490,328,109 by 2025.

## 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 Maryland'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

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- 6 Offense breakdowns in this 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.
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