

Blueprint for Smart Justice
Michigan



Blueprint *for* Smart Justice Michigan

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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 drug addiction, 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 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 end its reliance on incarceration, invest instead in alternatives to prison 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 Michigan — where Black people represented 54 percent of the state prison population despite constituting only 14 percent of the total state population in 2014¹ — 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 communities, policymakers, and criminal justice reform advocates in Michigan and across the nation to focus on efforts — 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 — that specifically combat these disparities.

In Michigan, the prison population has skyrocketed, growing by 172 percent between 1980 and 2016, when there were 41,122 people imprisoned in the state.² A portion of that growth resulted from offenses³ defined as “non-assaultive” by Michigan's Department of Corrections, which includes theft, operating a vehicle while intoxicated, and non-assaultive weapons offenses, among others. Nearly one in five (18 percent) people in the prison population at the end of 2016 was incarcerated for such crimes.⁴ Parole and probation violations — which are often technical and not on their own illegal, such as missing a scheduled appointment — also fuel mass incarceration in Michigan. In 2016, 3,061

people were returned to Michigan prisons for parole violations—64 percent of whom were imprisoned for technical violations.⁵

The rollback of parole reforms has also taken a toll. The state’s truth-in-sentencing laws, initiated in 1998, reduced or ended opportunities for earned release, and now people are mandated by the law to serve 100 percent of their minimum sentence before they become eligible for parole.⁶ In 2016, nearly half of all parole cases considered by the state parole board were deferred or denied.⁷ In addition, habitual felony offender provisions can trigger long sentences for people with prior convictions.⁸

The jail population in Michigan is also massive — in 2015, there were 15,328 people in Michigan’s local jails, approximately 54 percent of whom were awaiting trial and had not been convicted of a crime.⁹

Michigan’s compulsive reliance on incarceration has, as in many states, taken a heavy toll on communities of color. One in 21 Black men in Michigan was imprisoned in 2014.¹⁰ Overall, Black people were imprisoned at nearly seven times the rate of white people in Michigan in 2014.¹¹ Older Michiganders are also suffering in the state’s prisons — the number of people age 50 or older imprisoned in the state increased by 31 percent between 2006 and 2016. Now, they account for almost one-fourth of the total prison population.¹² Mental health and substance use disorders are widespread in Michigan prisons. A 2010 study estimated that 65 percent of imprisoned people experiencing mental health problems were not receiving any psychiatric services, and an estimated 86 percent of the overall prison population had a history of substance abuse.¹³

All of this is expensive as well. In 2016, Michigan spent a staggering \$2 billion of its general fund on corrections, accounting for one-fifth of its general fund expenditures.¹⁴

So what’s the path forward?

Michigan could reach a 50 percent reduction in the number of people imprisoned in the state by adopting a set of smart, evidence-based reforms. For example, reforming the use of cash bail in the state would prevent people from being pressured into taking guilty pleas

due to the collateral damage of remaining in jail while fighting a case. Expanding the use of alternatives to incarceration, such as substance abuse and mental health treatment, could address some of the root causes of conduct leading to arrest and criminal justice involvement, and help cut down on recidivism rates. In addition, it is critical that Michigan reform its sentencing laws that too often require judges to impose prison time when effective alternatives exist.

Increasing parole opportunities would also help reduce the prison population by releasing people who are ready and able to rejoin society. Pending legislation in Michigan which would ensure more eligible people are released from prison at their earliest release date must be passed and implemented. Legislators should also implement policies that allow for people to earn reduced time toward their prison sentences, including through participation in educational, vocational, and other rehabilitative opportunities while in prison.

Were Michigan to adopt these and other reforms outlined below, there would be 23,451 fewer people in prison by 2025, which would mean a total cost savings of nearly \$2 billion dollars that the state could allocate to other important needs, like education, infrastructure, and social services.

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

The State of the Michigan Prison System

Michigan’s imprisoned population has soared in recent decades, nearly tripling between 1980 and 2016, with an increase of 172 percent.¹⁵ In 2016, there were 41,122 people imprisoned in Michigan prisons.¹⁶ When people in jail and under some form of community supervision – like probation and parole – are factored in, the expansive reach of the state’s criminal justice system becomes even greater. At 3,240 per 100,000 adult residents, Michigan had the seventh-highest correctional control rate in the United States in 2015.¹⁷

AT A GLANCE

MICHIGAN PRISONS

41,122 people were imprisoned in Michigan in 2016.

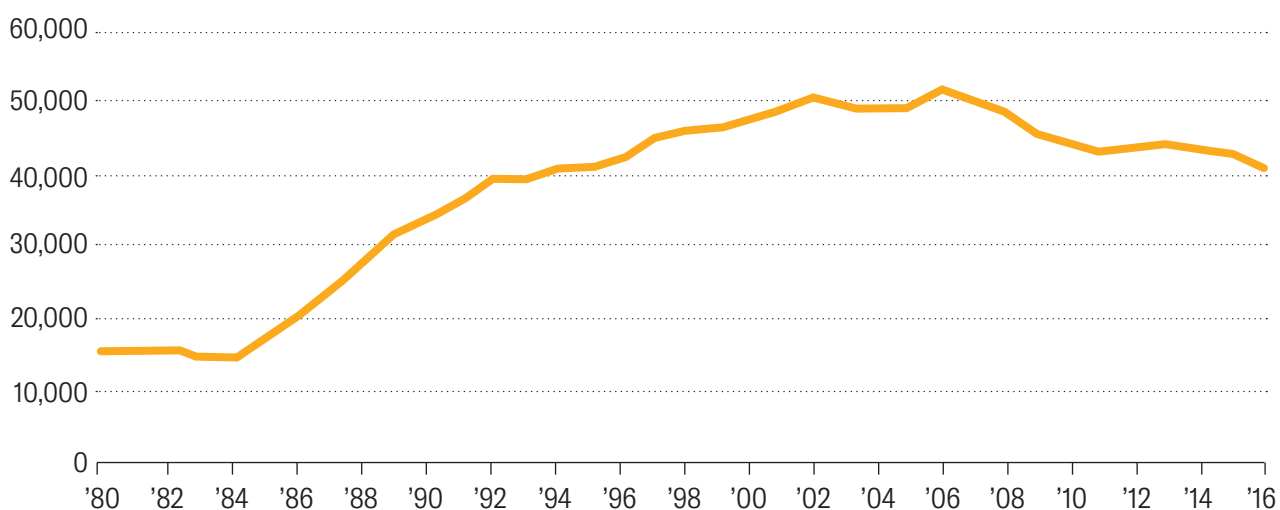
Michigan had the **seventh-highest** correctional control rate in the United States in 2015.

What Is Driving People Into Prison?¹⁸

In Michigan, a litany of offenses drives people into prisons. In 2016, non-assaultive offenses – including property and public order offenses – accounted for 42 percent of all prison admissions.¹⁹ Drug offenses are

classified separately from non-assaultive offenses and accounted for an additional 16 percent of admissions in 2016. A close examination of 2016 drug admissions shows that nearly 1,000 people were imprisoned after being convicted of drug distribution,²⁰ amounting to

MICHIGAN PRISON POPULATION



11 percent of all prison admissions. Other common offenses contributing to 2016 prison admissions in Michigan included non-assaultive weapons offenses (10 percent), operating a vehicle while intoxicated (6 percent), and drug possession (5 percent).²¹ In 2016, just over two in five admissions were for assaultive offenses, including robbery (7 percent) and assault (7 percent).²²

One of the most common ways that people end up in prison in Michigan is through a violation²³ of community supervision programs like parole. People on parole in Michigan have been released to serve the remainder of their incarceration sentence in the community, but they are often returned to prison for parole violations. In 2016, 3,061 people²⁴ were returned to Michigan prisons for parole violations—including technical violations that wouldn’t be illegal under normal circumstances, like missing an appointment, as well as sentences for new criminal offenses. Although the number of prison admissions for parole violations has decreased since 2006, the proportion of parole revocations that resulted from technical violations remained high, at 64 percent in 2016.²⁵

In addition to parole revocations, some people in Michigan who are sentenced to probation in lieu of incarceration are admitted to prison for violating

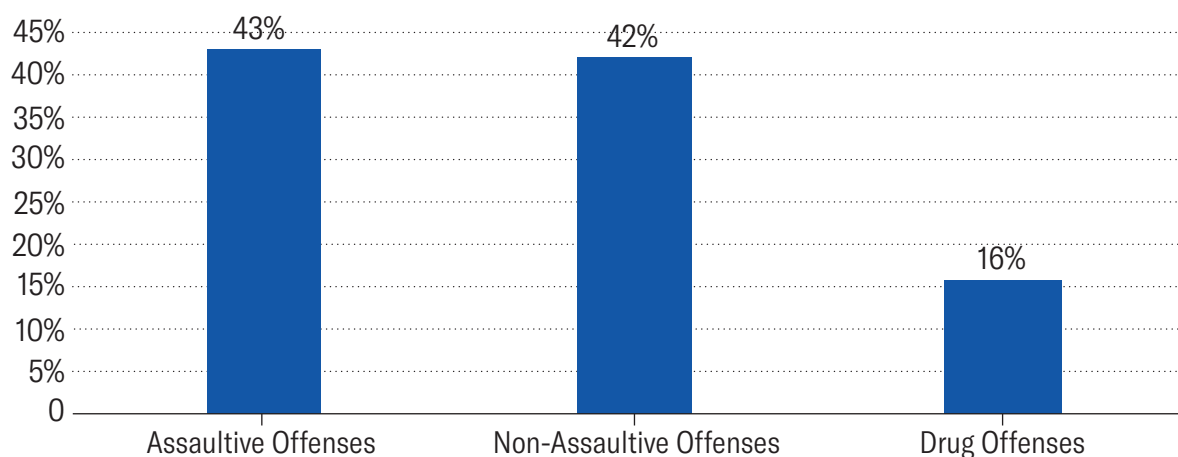
the terms of their probation or for committing a new offense. In 2016, probation violations accounted for one-quarter of Michigan prison admissions.²⁶

Another contributor to the incarcerated population in Michigan are laws that trigger mandatory prison sentences regardless of circumstance or the opinion of a judge, specifically for felony possession of a firearm. Habitual offender enhancements, which can be applied to sentences for people with prior felony convictions at the discretion of prosecutors, also often lead to long prison terms.²⁷ As a result, people who would otherwise be eligible for probation or other alternatives to incarceration are instead imprisoned.

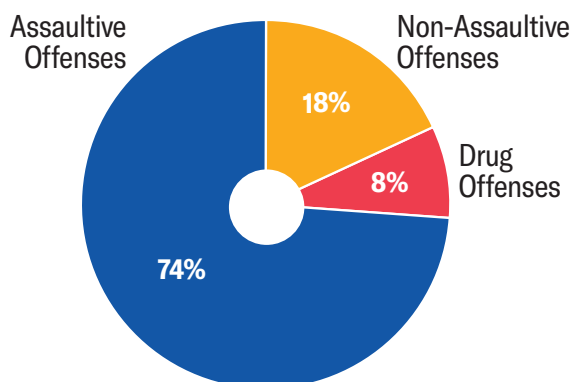
The Current Prison and Jail Population

Overall, at the end of 2016, 74 percent of those incarcerated in Michigan’s prison system were serving time for assaultive offenses, such as assault and robbery.²⁸ Twenty-six percent had been convicted of non-assaultive or drug offenses, including drug distribution (7 percent) and non-assaultive weapons violations (5 percent).²⁹ A large number of people are also held in Michigan’s jail system, more than half of whom haven’t been convicted of a crime. In 2015,

MICHIGAN PRISON ADMISSIONS BY OFFENSE TYPE (2016)



MICHIGAN PRISON POPULATION BY OFFENSE TYPE (2016)



there were 15,328 people in Michigan’s local jails, approximately 54 percent of whom were awaiting trial.³⁰

Why Do People Stay in Prison for So Long?

An analysis of 35 states conducted in 2012 revealed that Michigan had the longest average time served of people released from prison in those states.³¹ Between 2006 and 2016, the average minimum sentence of people in Michigan’s prisons increased by 32 percent, reaching 9.9 years in 2016.³² That year, 40 percent of people in Michigan prisons were serving a sentence of over 15 years, the vast majority (98 percent) of whom had been convicted of an assaultive offense. Nevertheless, in 2016, 405 people in Michigan were serving a sentence of more than 15 years for a non-assaultive or drug offense. Thirteen percent of the total 2016 Michigan prison population was serving a life sentence.³³

Lengthy terms in prison for people convicted of assaultive offenses are a major reason why people stay in Michigan prisons for such long periods. In 2016, the average minimum sentence for someone who was imprisoned for an assaultive offense was 12.7 years, compared to 4.5 years for a drug offense and 3 years for a non-assaultive offense.³⁴

AT A GLANCE

MICHIGAN PRISON AND JAIL POPULATION

26 percent of Michigan’s prison population was imprisoned for a non-assaultive or drug offense in 2016.

There were **15,328** people imprisoned in local jails in Michigan in 2015.

54 percent of people in local jails in 2015 were awaiting trial.

Truth-in-sentencing laws, sentence enhancements, and people remaining in prison despite being eligible for parole also contribute to high rates of long imprisonment in Michigan. Following the elimination of “good time” credits in 1978, the state’s truth-in-sentencing laws – initiated in 1998 – reduced or ended opportunities for earned release. Now, people are mandated by the law to serve 100 percent of their minimum sentence before they become eligible for parole.³⁵

Michigan’s criminal code also includes habitual felony offender provisions, which trigger long sentences for people with prior convictions. For example, in Michigan, people with three or more prior felony convictions can be subject to a 25-year mandatory minimum sentence for a subsequent offense.³⁶ Application of these sentencing enhancements is selective – 42 percent of eligible people in 2012 received the enhancement – and varies significantly between counties. In 2012, across the 10 most populated Michigan counties, the proportion of people eligible for a habitual offender enhancement who received one ranged from 10 percent (Washtenaw County) to 89 percent (Oakland County).³⁷ In addition to geographic variation, the use of these habitual offender enhancements is inconsistent, as prior convictions can be – but are not always – counted twice during the calculation of sentences.³⁸

AT A GLANCE

LENGTH OF IMPRISONMENT

Michigan ranked **first** in a 2012 analysis of the average length of imprisonment in 35 states.

People imprisoned in Michigan must serve **100 percent** of their minimum sentence before they become eligible for parole.

The average minimum sentence increased by **32 percent** between 2006 and 2016.

48 percent of parole cases considered by Michigan's parole board in 2016 were deferred or denied.

In addition, parole grant rates, which are controlled by the state parole board, have fluctuated over time. In 2009, the number of people who were released from prison and entered into the parole system spiked to 13,541.³⁹ This increase has been attributed to the now-defunded Michigan Prisoner Re-Entry Initiative — which allowed the parole board to release those whom it had refused to release in the past — as well as former Governor Jennifer Granholm's expansion of the parole board from 10 to 15 members. This parole board expansion was followed by a 2,000-person increase in releases into the parole system.⁴⁰

However, these trends were reversed in 2011 when Governor Rick Snyder scaled the parole board back to its original 10 members. By 2016, the number of people released from prison and into the parole system had fallen to 10,626,⁴¹ and nearly half of all parole cases considered by the board were deferred or denied.⁴² In 2012, most people in prison who were eligible for parole had already served approximately 125 percent of their minimum sentence.⁴³

Who Is Imprisoned

Black Michiganders: In Michigan, mass incarceration has severely and adversely impacted communities of color. In 2014, Black people were imprisoned at nearly seven times the rate of white people in Michigan. In the same year, while Black people constituted only 14 percent of the total state population, they made up 54 percent of the Michigan prison population.⁴⁴ One in 21 Black men in Michigan was imprisoned in 2014.⁴⁵

Disabled Michiganders: A 2010 University of Michigan correctional facility study found that an estimated 77 percent of the male general prison population had mental health symptoms and no services. Additionally, an estimated 20 percent of the men and 25 percent of the women in prison were reported to show symptoms of severe mental illness, and an estimated two thirds of people in prison who were experiencing mental health symptoms were not receiving services.⁴⁶

Female Michiganders: Between 2006 and 2016, the number of women imprisoned in Michigan increased by 3 percent, while the number of men imprisoned decreased by 21 percent over the same time period.⁴⁷

Older Michiganders: Michigan's prison population is rapidly graying, with the number of imprisoned people age 50 or older increasing by 31 percent between 2006 and 2016. This group now accounts for

AT A GLANCE

DEMOGRAPHICS

In 2014, Black people were imprisoned at nearly **seven times** the rate of white people in Michigan.

54 percent of people in Michigan's prisons in 2014 were Black.

The total number of people age 50 or older in Michigan's prisons increased by **31 percent** between 2006 and 2016.

AT A GLANCE

MENTAL HEALTH AND SUBSTANCE USE DISORDERS

An estimated **77 percent** of the male general population in prison in 2010 had mental health symptoms and no services.

40 percent of people in the Michigan prison system were not receiving substance abuse treatment they needed, according to a 2010 study.

86 percent of people in the Michigan prison population were identified in 2010 as having a history of substance abuse.

almost one-fourth of the total prison population, and it is growing.⁴⁸ While people older than 50 accounted for just 3 percent of prison admissions in 1995, by 2013 they accounted for 10 percent of prison admissions. Their increasing population is also influenced by the number of people who are aging in prison while serving lengthy sentences. The majority (60 percent) of people over the age of 50 in Michigan prisons in 2013 had been admitted to prison when they were age 50 or younger, compared to 46 percent in 1995. In 2013, 613 people in Michigan's prisons were over the age of 50 and had been admitted when they were age 25 or younger.⁴⁹

People With Mental Health and Substance Use Disorders

In Michigan's prisons, mental health and substance use disorders are widespread. Between 2011 and 2015, the average prison population remained fairly stable while the number of mental health census increased by over 1,000 people.⁵⁰ According to a 2010 study, 86 percent of people in Michigan's prisons had a history of substance abuse, and a reported 40 percent of people determined to be in need of treatment for substance abuse were not receiving services.⁵¹

AT A GLANCE

BUDGETS

Michigan spent more than **\$2 billion** of its general fund on corrections in 2016.

General fund spending on corrections increased by **200 percent** between 1985 and 2016.

Budget Strains

As Michigan's incarcerated population has risen, so has the cost burden. In 2016, Michigan spent more than \$2 billion of its general fund on corrections, accounting for one-fifth of its general fund expenditures, a proportion that has remained relatively constant over many years.⁵² This has forced tradeoffs in other state priorities: Between 1985 and 2016, for example, Michigan's general fund corrections spending tripled while general fund education spending decreased by 50 percent.⁵³

Ending Mass Incarceration in Michigan: A Path Forward

There are many potential policy changes that can help Michigan end its mass incarceration crisis, but it will be up to the people and policymakers of Michigan 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, Michigan must break its overreliance on incarceration as a response to social problems. Evidence indicates that prisons seldom offer adequate solutions to wrongful behavior. In fact, imprisonment can be counterproductive – increasing cycles of harm and violence while failing to provide rehabilitation for incarcerated people and adequate accountability to the survivors of crime.⁵⁴ Here are some strategies:

- **Bail reform:** Michigan can significantly reduce its rates of pretrial detention by reforming its use of cash bail. Far too often, people who cannot afford their bail will 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. Research shows people who are detained before trial face significant collateral damage, such as job loss, family disruption, loss of housing, and/or an interrupted education.⁵⁵ After even a short stay in jail, taking a plea deal can sound less burdensome than losing everything, which is

likely why evidence shows that pretrial detention significantly increases a defendant's risk of conviction.⁵⁶ The current cash bail system causes particular harm to people of color, as research shows they are detained at higher rates across the country when unable to meet bail, and that courts set significantly higher bail amounts for them.⁵⁷ In order to significantly reduce pretrial detention and combat racial disparities, Michigan's Legislature, courts, prosecutors, sheriffs, and defense bar should be involved in reforming the cash bail system to limit pretrial detention to the rare cases when a person poses a flight risk or a serious, clear threat to another person.

- **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 abuse treatment, mental health care, employment, housing, health care, and vocational training have significantly reduced recidivism rates for participants. For crimes involving violence, restorative justice programs – that are designed to hold responsible people accountable and support those who were harmed – can be particularly promising. When they are rigorous and well-implemented, these processes have not only demonstrated reductions in recidivism for defendants,⁵⁸ they have also been shown to decrease symptoms of post-traumatic stress in victims of crime.⁵⁹ Prosecutors and judges who embrace these solutions can fulfill their

responsibility to protect public safety and support 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 programs led by prosecutors that divert people before they are charged.

- **Alternatives to incarceration — substance use treatment:** Drug convictions are a significant contributor to prison admissions in Michigan despite the existence of evidence-based alternatives such as substance use treatment or decriminalization that are better suited to addressing drug use. Furthermore, substance use disorders can be underlying drivers of other offenses, including burglaries and assaults, which may be better and more effectively addressed through evidence-based responses instead of prison time.
- **Alternatives to incarceration — mental health treatment:** Mental health diversion is 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.⁶⁰ When implemented effectively, diversion reduces arrests, encourages voluntary treatment in the community, and saves money.⁶¹ 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.⁶²
- **End direct filing of minors:** Michigan remains one of only five states that automatically prosecute all 17-year-olds as adults. This policy is at odds with state laws and national and international policies that declare adulthood to begin at age 18.⁶³ For those younger than 17, prosecutors exercise their discretion by choosing

to file directly to adult criminal court. This practice needs to end. Prosecuting youth as adults is harmful to children, threatens public safety, and is expensive. Research finds that young people who reenter society after time spent in the adult system are 34 percent more likely to be convicted of subsequent charges, for those charges to come sooner, and for them to be for more violent offenses than other youth who were involved in the juvenile justice system instead.⁶⁴ Youth incarcerated in adult facilities are also more likely to be physically attacked, sexually assaulted, and to attempt suicide than young people in the juvenile justice system.⁶⁵ For all of these reasons, Michigan needs to end its practice of prosecuting children as adults.

- **Maintaining judicial discretion:** Strategies to reduce admissions to prison should also include reforming Michigan’s sentencing enhancements, which can require that judges impose prison time when effective alternatives exist. Judges must also 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 imprisonment.

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. These courts may needlessly subject people with disabilities to criminal justice control and 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 amount of time people serve, even by just a few months, can lead to thousands of fewer people in Michigan’s prisons. Here’s how:

- **Sentencing reform – general:** Reducing the amount of time served can be accomplished by amending Michigan’s laws to reduce maximum penalties and crime classifications. Repealing the state’s offender variables, habitual offender law, and mandatory minimums, as well as reforming sentences of life without parole, will also reduce the incarcerated population.⁶⁶ Further, while Michigan reclassified some crimes and monetary thresholds in 1998, it should further reclassify more lower-level offenses – like property crimes and drug possession – as misdemeanors instead of felonies and adjust the weight and monetary thresholds that trigger more serious sentences for those offenses.
- **Parole reform:** Reducing time people serve in Michigan’s prisons can also be accomplished by improving parole and release policies and practices to ensure that more eligible people are released earlier from prison. For example, Michigan can pass the meaningful objective parole legislation and a comprehensive medical parole bill. People with disabilities are twice as likely to have their parole or probation revoked, likely due to the inability or unwillingness of supervision officers to accommodate their disabilities.⁶⁷ 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. Michigan can take further steps to increase the parole grant rates that keep many people locked up by increasing the low parole grant rates that keep many people locked up. These changes could permit the release of people who demonstrate good behavior and serve their minimum sentences. Similarly, the state should offer people opportunities to earn credits to reduce their prison sentences, including through participation in educational, vocational, and rehabilitative opportunities while in prison. Eliminating imprisonment for technical probation and parole violations should also be a priority for Michigan’s lawmakers.⁶⁸

Reducing Racial Disparities

Reducing the number of people who are incarcerated in Michigan 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.⁶⁹ Focusing on only one of the factors that drives racial disparity does not address issues across the 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 and jail populations across the board will likely result in lowering incarceration 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 2012.⁷⁰ 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.⁷¹

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
- Requiring prosecutors' offices be transparent in their hiring practices, charging decisions, and plea deals
- Investing in diversion/alternatives to detention in communities of color
- Reducing the use of pretrial detention and eliminating wealth-based incarceration

- 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 rates of people with disabilities in the criminal system is two to six times that of the general population.⁷² In particular, people with psychiatric disabilities are dramatically overrepresented in jails and prisons across the country.⁷³

- People showing signs of mental illness are twice as likely to be arrested as people without mental illness for the same behavior.⁷⁴
- People with mental illness are sentenced to prison terms that are, on average, 12 percent longer than those of other people in prison.⁷⁵
- 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.⁷⁶

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.⁷⁷

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.⁷⁸ 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.⁷⁹ 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.⁸⁰

TAKING THE LEAD

Prosecutors: They make decisions on when to prosecute an arrest, what charges to bring, and which plea deals to offer and accept. They can decide to divert 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, what penalties to include, how long sentences can be, and when to take away discretion from judges. 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. And they can decide to sufficiently fund mental health and substance abuse treatment so 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 Michigan, 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, they may recognize and release more people who have disciplinary issues in their records that are due to a lack of accommodations for their disabilities.

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.

- 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
- Requiring prosecutors' offices be transparent in their hiring practices, charging decisions, and plea deals
- 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

“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.”⁸¹

—From *The New Jim Crow*, Michelle Alexander

Forecaster Chart

There are many pathways to cutting the prison population in Michigan 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 Michigan, 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****
Robbery	<ul style="list-style-type: none"> Reduce average time served by 60% (from 6.66 to 2.66 years) Institute alternatives that reduce admissions by 30% (342 fewer people admitted) 	9.33% reduction (4,357 fewer people)	White: 4.3% increase Black: 3.7% decrease Native American: 5.3% increase Asian: 2.3% decrease Hawaiian/Pacific Islander: 10.3% increase	\$98,670,415
Burglary	<ul style="list-style-type: none"> Reduce average time served by 60% (from 3.27 to 1.31 years) Institute alternatives that reduce admissions by 40% (581 fewer people admitted) 	7.46% reduction (3,482 fewer people)	White: 2.1% decrease Black: 1.8% increase Native American: 1.2% decrease Asian: 0.3% decrease Hawaiian/Pacific Islander: 72.1% decrease	\$91,605,815
Parole violations (no new sentence)	<ul style="list-style-type: none"> Institute alternatives that end all admissions (1,904 fewer people admitted) 	7.11% reduction (3,320 fewer people)	White: 0.1% increase Black: 0.2% decrease Native American: 1.4% increase Asian: 5.3% increase Hawaiian/Pacific Islander: 7.7% increase	\$83,268,893
Drug offenses	<ul style="list-style-type: none"> Reduce average time served for drug distribution by 70% (from 2.65 to 0.80 years) Institute alternatives that reduce admissions for drug distribution by 70% (670 fewer people admitted) Institute alternatives that end all admissions for drug possession (377 fewer people admitted) 	6.58% reduction (3,075 fewer people)	White: 0.7% decrease Black: 0.6% increase Native American: 1.2% decrease Asian: 3.6% increase Hawaiian/Pacific Islander: 7.0% increase	\$87,229,641

Impact Compared to 2025 Baseline*				
Offense category**	Policy outcome	Prison population impact	Impact on racial and ethnic makeup of population***	Cost savings****
Assault	<ul style="list-style-type: none"> Reduce average time served by 60% (from 3.86 to 1.54 years) Institute alternatives that reduce admissions by 50% (477 fewer people admitted) 	5.90% reduction (2,757 fewer people)	White: 1.4% increase Black: 1.2% decrease Native American: 1.5% decrease Asian: 0.4% decrease Hawaiian/Pacific Islander: 6.3% increase	\$69,286,949
Weapons offenses*****	<ul style="list-style-type: none"> Reduce average time served by 70% (from 3.09 to 0.93 years) 	3.52% reduction (1,642 fewer people)	White: 2.2% increase Black: 1.9% decrease Native American: 2.2% increase Asian: 0.9% increase Hawaiian/Pacific Islander: 3.6% increase	\$40,079,169
Public order offenses*****	<ul style="list-style-type: none"> Reduce average time served by 70% (from 2.14 to 0.64 years) Institute alternatives that reduce admissions by 80% (496 fewer people admitted) 	2.65% reduction (1,239 fewer people)	White: 0.9% decrease Black: 0.8% increase Native American: 1.3% decrease Asian: 1.5% decrease Hawaiian/Pacific Islander: 2.7% increase	\$37,268,590
Theft	<ul style="list-style-type: none"> Reduce average time served by 70% (from 1.81 to 0.54 years) Institute alternatives that reduce admissions by 70% (523 fewer people admitted) 	2.60% reduction (1,214 fewer people)	White: 0.5% decrease Black: 0.4% increase Native American: 1.9% decrease Asian: 2.4% decrease Hawaiian/Pacific Islander: 2.7% increase	\$35,759,841
DWI	<ul style="list-style-type: none"> Reduce average time served by 70% (from 1.66 to 0.50 years) Institute alternatives that reduce admissions by 80% (432 fewer people admitted) 	1.81% reduction (845 fewer people)	White: 1.4% decrease Black: 1.2% increase Native American: 2.3% decrease Asian: No change Hawaiian/Pacific Islander: 1.8% increase	\$26,810,755

Impact Compared to 2025 Baseline*				
Offense category**	Policy outcome	Prison population impact	Impact on racial and ethnic makeup of population***	Cost savings****
Other property offenses*****	<ul style="list-style-type: none"> Reduce average time served by 70% (from 2.44 to 0.73 years) Institute alternatives that reduce admissions by 70% (185 fewer people admitted) 	1.22% reduction (571 fewer people)	White: 0.6% decrease Black: 0.5% increase Native American: 1.5% decrease Asian: 0.4% increase Hawaiian/Pacific Islander: 1.2% increase	\$16,262,000
Fraud	<ul style="list-style-type: none"> Reduce average time served by 70% (from 1.68 to 0.50 years) Institute alternatives that reduce admissions by 70% (255 fewer people admitted) 	1.20% reduction (559 fewer people)	White: 0.6% decrease Black: 0.5% increase Native American: No change Asian: 1.2% decrease Hawaiian/Pacific Islander: 1.2% increase	\$17,582,486
Motor vehicle theft	<ul style="list-style-type: none"> Reduce average time served by 70% (from 2.88 to 0.86 years) Institute alternatives that reduce admissions by 70% (108 fewer people admitted) 	0.83% reduction (390 fewer people)	White: No change Black: No change Native American: 0.5% decrease Asian: 1.3% decrease Hawaiian/Pacific Islander: 0.8% increase	\$11,143,209

*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. The data used for the analyses in this chart does not contain information on which prison terms are subject to sentencing enhancements, such as habitual offender or felony firearm enhancements. The forecaster model cannot estimate the effect of changes to habitual offender or felony firearm enhancements due to these data limitations.

*** 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 Michigan, where Black people make up 54 percent of the prison population but constitute only 14 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 Michigan were to implement reforms leading to the changes above, 23,451 fewer people would be in prison in Michigan by 2025, a 50.21 percent decrease. This would lead to a total cost savings of \$1,863,491,702 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 Michigan'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 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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- 2 Bureau of Justice Statistics (BJS), Corrections Statistical Analysis Tool.
- 3 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.
- 4 Michigan Department of Corrections (MDOC), 2016 Statistical Report, https://www.michigan.gov/documents/corrections/MDOC_2016_Statistical_Report_599836_7.pdf.
- 5 Includes 1,956 technical violator returns (including returns from out-of-state) and 1,105 new sentence returns. MDOC, 2016 Statistical Report, https://www.michigan.gov/documents/corrections/MDOC_2016_Statistical_Report_599836_7.pdf.
- 6 BJS, “State Fact Sheet – Michigan” (last updated December 28, 2015), <http://www.ncrp.info/SitePages/StateFactSheets>.
- 7 Note: Between March 2016 and February 2017, 4,300 cases were denied, 4,756 cases were deferred, and there were 18,961 actions that resulted in the granting, denying, or deferring of parole. Forty-eight percent comes from (4,300+4,756)/18,961, and it represents the percentage of actions that resulted in the denial or deferral of parole (excluding decisions for Special Alternative Incarceration (SAI) grants or no parole guideline score). MDOC, *Report to the Legislature: Parole Board Decisions Report* (April 2017) https://www.michigan.gov/documents/corrections/Section_422_Parole_Board_Decisions_-_April_557443_7.pdf.
- 8 BJS, “State Fact Sheet – Michigan” (last updated December 28, 2015), <http://www.ncrp.info/SitePages/StateFactSheets>.
- 9 Note: Total jail population and pretrial jail population data are drawn from different sources in the cited source. Total jail population data is reported as average daily population in 2015 and excludes federal jail populations, while pretrial jail population is reported as a single day count (taken on June 30) and includes federal jail populations. Vera Institute of Justice, *Incarceration Trends* (2015), <https://www.vera.org/projects/incarceration-trends>.
- 10 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>.
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- 13 Report to the Legislature, *Mental Health Independent Study* (2010), https://www.michigan.gov/documents/corrections/2010_Boilerplate_302_Final_Version_316653_7.pdf.
- 14 National Association of State Budget Officers (NASBO), *State Expenditure Report* (1985-2016), <https://www.nasbo.org/reports-data/state-expenditure-report/state-expenditure-archives>.
- 15 BJS, Corrections Statistical Analysis Tool.
- 16 *Id.*
- 17 Danielle Kaebler and Lauren Glaze, *Correctional Populations in the United States, 2015* (BJS, December 2016), <https://www.bjs.gov/content/pub/pdf/cpus15.pdf>.
- 18 Prison admissions reflect the number of people entering Michigan prisons in a given year, while the total prison population refers to the total number of people imprisoned at the end of each year (defined in this case as December 31).
- 19 Note: Michigan classifies criminal offenses as assaultive, non-assaultive, or drug offenses. Assaultive crimes involve an element of assault, and they generally include crimes ranging from simple assault to homicide. In contrast, non-assaultive offenses lack the element of assault and include most property and public order offenses. Drug offenses, which are categorized separately from assaultive and non-assaultive offenses, include possession, distribution, trafficking, and other controlled substance offenses. For a full list of offenses included in each category, see MDOC, 2016 Statistical Report, https://www.michigan.gov/documents/corrections/MDOC_2016_Statistical_Report_599836_7.pdf.
- 20 Note: Drug distribution includes delivering drugs, manufacturing drugs, distributing drugs, manufacturing prescription forms, operating and maintaining a drug lab, and maintaining a drug house. It also includes intending or attempting to perform any of these activities.
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- 22 MDOC, 2016 Statistical Report, https://www.michigan.gov/documents/corrections/MDOC_2016_Statistical_Report_599836_7.pdf; MDOC, 2015 Statistical Report, https://www.michigan.gov/documents/corrections/MDOC_2015_Statistical_Report_-_2016.08.23_532907_7.pdf.
- 23 Parole and probation revocations happen when an individual on community supervision is admitted to prison for violating a condition of supervision (technical violation) or committing a new crime. Technical violations are actions that are not violations of law under normal circumstances, such as missing an appointment.
- 24 Includes 1,956 technical violator returns (including returns from out-of-state) and 1,105 new sentence returns. MDOC, 2016 Statistical Report, https://www.michigan.gov/documents/corrections/MDOC_2016_Statistical_Report_599836_7.pdf.
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- 32 MDOC, *2016 Statistical Report*, https://www.michigan.gov/documents/corrections/MDOC_2016_Statistical_Report_599836_7.pdf; MDOC, *2006 Statistical Report*, https://www.michigan.gov/documents/corrections/MDOC_2006_Statistical_Report_255590_7.pdf.
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- 35 BJS, "State Fact Sheet – Michigan" (last updated December 28, 2015), <http://www.ncrp.info/SitePages/StateFactSheets>.
- 36 BJS, "State Fact Sheet – Michigan" (last updated December 28, 2015), <http://www.ncrp.info/SitePages/StateFactSheets>; Michigan Penal Code 769.12.
- 37 Council of State Governments (CSG), "Sentencing and Justice Reinvestment Initiative" (PowerPoint presentation, March 19, 2014), https://csgjusticecenter.org/wp-content/uploads/2014/03/MLRC_3-19-14.pdf.
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- 41 MDOC, *2016 Statistical Report*, https://www.michigan.gov/documents/corrections/MDOC_2016_Statistical_Report_599836_7.pdf.
- 42 Note: Between March 2016 and February 2017, 4,300 cases were denied, 4,756 cases were deferred, and there were 18,961 actions that resulted in the granting, denying, or deferring of parole. Forty-eight percent comes from (4,300+4,756)/18,961, and it represents the percentage of actions that resulted in the denial or deferral of parole (excluding decisions for Special Alternative Incarceration (SAI) grants or no parole guideline score). MDOC, *Report to the Legislature: Parole Board Decisions Report* (April 2017) https://www.michigan.gov/documents/corrections/Section_422_Parole_Board_Decisions_-_April_557443_7.pdf.
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- 46 Report to the Legislature, *Mental Health Independent Study* (2010), https://www.michigan.gov/documents/corrections/2010_Boilerplate_302_Final_Version_316653_7.pdf.
- 47 BJS, Corrections Statistical Analysis Tool.
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- 50 Michigan Department of Health and Human Services Corrections Mental Health Stakeholder 298 Working Group (April 2016), https://www.michigan.gov/documents/mdhhs/Corrections_and_MH_521019_7.pdf.
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- 52 NASBO, *State Expenditure Report* (1985-2016), <https://www.nasbo.org/reports-data/state-expenditure-report/state-expenditure-archives>.
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- 65 See Weemhoff, *Youth Behind Bars*, <https://www.scribd.com/document/228983678/MCCD-Youth-Behind-Bars-Full-Report>.
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