

*Blueprint for Smart Justice*  
**Nebraska**





# Blueprint *for* Smart Justice Nebraska

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# Contents

- Executive Summary ..... 4
- The State of the Nebraska Prison System ..... 6
  - What Is Driving People Into Prison? ..... 7
  - The Current Prison and Jail Population ..... 8
  - Who Is Imprisoned ..... 9
  - Budget Strains ..... 10
- Ending Mass Incarceration in Nebraska: A Path Forward ..... 11
  - Reducing Admissions ..... 11
  - A Note on Specialty Courts ..... 12
  - Reducing Time Served ..... 13
  - Reducing Racial Disparities ..... 13
  - Reducing Disability Disparities ..... 14
  - Taking the Lead ..... 15
  - Forecaster Chart ..... 16
  - Total Fiscal Impact ..... 19
  - Methodology Overview ..... 19

# Executive Summary

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

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

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

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

The analysis was eye-opening.

In every state, we found that reducing the prison population by itself does little to diminish racial disparities in incarceration – and in some cases would worsen them. In Nebraska – where Native American and Black Nebraskans are incarcerated at rates nine<sup>1</sup> and ten<sup>2</sup> times higher than the rate for white people, respectively – reducing the number of people imprisoned will not on its own reduce racial disparities within the prison system. This finding confirms for the Campaign that urgent work remains for advocates, policymakers, and communities across the nation to focus on efforts like policing and prosecutorial reform that are specific to combatting these disparities.

As of 2018, all but one correctional facility in Nebraska exceeded its design capacity, operating at an average of 156 percent capacity systemwide.<sup>3</sup> Admissions to the state's prison system grew by 41.5 percent between 2000 and 2015.<sup>4</sup> Startling numbers like these prompted the Nebraska Legislature to pass justice reinvestment reform legislation in 2015 (Legislative Bill 605), and while the reforms are a good start, overcrowding remains a severe problem.<sup>5</sup>

Some of the justice reinvestment reforms simply do not go far enough. For example, while the legislation attempted to expand probation opportunities for people convicted of the least serious category of felony (Class IV), prison admissions for that group were 83 percent higher than anticipated as of mid-2017.<sup>6</sup> And in spite of reforms intended to increase the use of mandated community supervision to reduce recidivism, the number of Nebraskans returning to prison from parole for both violations and new offenses remain on the rise.<sup>7</sup> Nebraska's jails, many of which house people sentenced to prison who cannot be held there due to overcrowding,<sup>8</sup> overwhelmingly house people awaiting trial who have not been convicted of a crime.<sup>9</sup>

And all this incarceration is expensive – in 2016, more than \$300 million of Nebraska’s general fund spending was on corrections.<sup>10</sup>

So what’s the path forward for one of the most overcrowded prison systems in the nation?<sup>11</sup>

Any meaningful effort to reach a 50 percent reduction in incarceration in Nebraska must include a concerted effort by lawmakers to stop introducing or endorsing any legislation to create new chargeable criminal offenses, particularly legislation that duplicates or overlaps with existing offenses. Lawmakers should also move to correct or repeal existing laws that dictate unduly long sentences, such as mandatory minimums. Reducing the amount of time served, even by a few months, could significantly reduce the state’s prison population.

Further, a focus on front-end reforms that reduce the number of people who come into contact with the correctional system in the first place is essential. Pre- and post-booking diversion programs should be expanded in an effort to direct people out of the criminal legal system, particularly those who may benefit from access to treatment and support for people with disabilities. To address the booming probation and parole population, Nebraska policymakers can look to California, where reducing the parole conditions for lower-risk people<sup>12</sup> has proven successful and saved the state money.<sup>13</sup>

Were Nebraska to adopt the reforms outlined in this Smart Justice 50-State Blueprint and achieve a 50 percent reduction in its prison population, the state could save nearly \$140 million by 2025 – money that could then be spent on schools, infrastructure, and services for its citizens, or simply given back to taxpayers in the form of tax breaks.

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

# The State of the Nebraska Prison System

Nebraska’s prison population grew nearly fourfold between 1980 and 2016, reaching a peak of 5,347 people in 2014.<sup>14</sup> The number of people admitted to prison increased 41.5 percent between 2000 and 2015 – from 1,606 people in 2000 to 2,272 people in 2015.<sup>15</sup> As its imprisoned population has boomed, Nebraska’s prisons have become severely overcrowded, prompting the state to pass justice reinvestment reform legislation in 2015 (LB 605).

While these reforms recently precipitated a decline in the prison population, Nebraska’s prisons remain extremely overcrowded.<sup>16</sup> As of 2018, all but one of the state’s facilities<sup>17</sup> exceed capacity, operating at an average of 156 percent of design capacity systemwide – with one facility operating at nearly 300 percent of design capacity.<sup>18</sup> Recent reports illustrate that initial reforms have not yet realized projected impacts<sup>19</sup> – corrections officers report being overburdened and

## AT A GLANCE

### NEBRASKA PRISONS

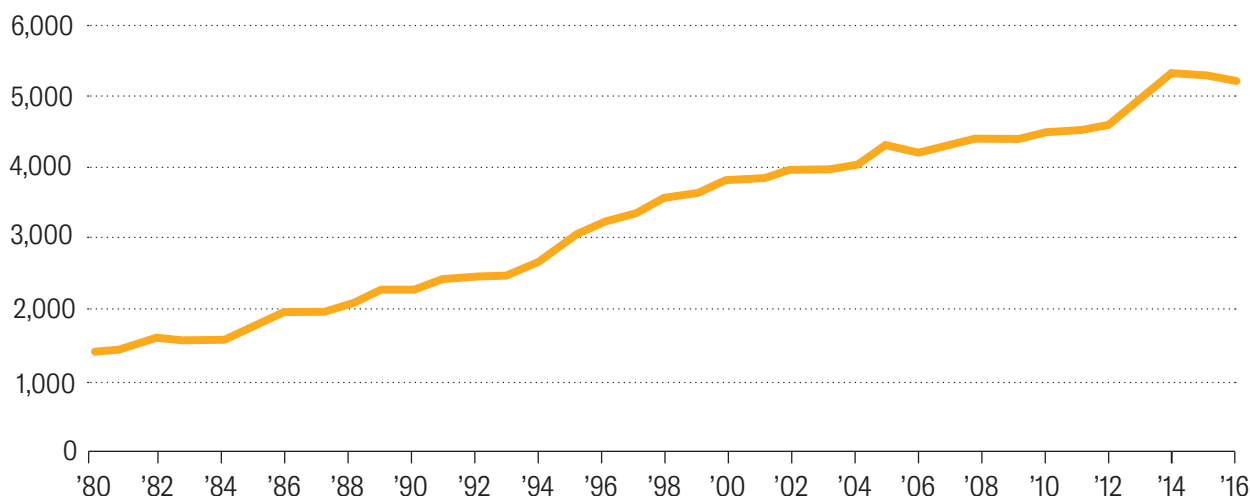
Nebraska’s prison population grew **nearly fourfold** between 1980 and 2016.

**5,235** people were imprisoned in Nebraska in 2016.

Yearly admissions to Nebraska’s prisons increased by **41.5 percent** between 2000 and 2015.

Nebraska’s prison system remains one of the most overcrowded in the nation.<sup>20</sup> In 2017, the ACLU of Nebraska and its partners filed a federal lawsuit

## NEBRASKA PRISON POPULATION



against the state prison system and the board of parole to address the dangerous consequences of Nebraska’s overcrowded and under-resourced prisons, including inadequate health care and a lack of accommodations for people with disabilities.<sup>21</sup> Nebraska’s system of mass incarceration is so extensive that nearly one in 10 children in Nebraska will have a parent in jail or prison at some point in their childhood.<sup>22</sup>

### What Is Driving People Into Prison?

In Nebraska, a litany of offenses drives people into prisons. The top five offenses for admissions in 2015 were drug-related offenses (21.6 percent), assault (10.2 percent), public order/other offenses (9.7 percent), driving while impaired (DWI) (9.3 percent), and theft (9.2 percent).<sup>23</sup> In 2015, less than 30 percent of people entering Nebraska prisons were sentenced for offenses that involved violence.

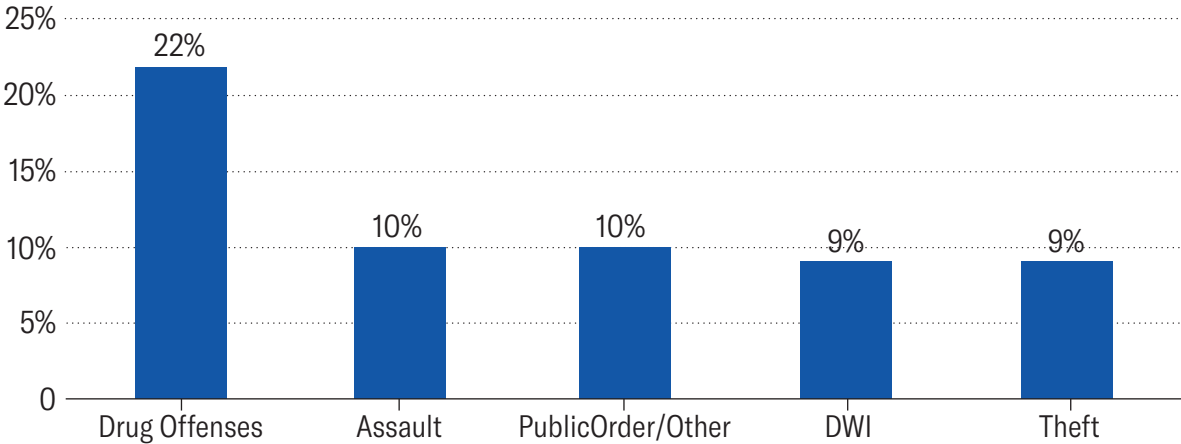
Historically, Nebraska underutilizes probation as an alternative to prison for people convicted of less serious convictions, and many people convicted of the least serious category of felony (Class IV) are often sentenced to short periods of incarceration, followed by little or no postrelease supervision.<sup>24</sup> This contradicts overwhelming evidence showing that people sentenced

to probation for felonies (across all risk levels) have lower rates of recidivism than do people sentenced to prison.<sup>25</sup>

Nebraska’s recent reforms attempted to expand opportunities for probation by creating a presumption of probation for certain types of felonies, meaning that people convicted of these nonviolent, low-level offenses would be diverted to probation by default. Even so, a 2017 analysis found that Nebraska’s justice reinvestment reforms have not gone far enough to reduce prison admissions; in fact, admissions for Class IV were 83 percent higher than expected that year.<sup>26</sup>

Nebraska has also taken concrete steps to reduce the number of people returning to prison. More than one-quarter (25.5 percent) of people released from Nebraska prisons in fiscal year 2014 returned in the next three years.<sup>27</sup> Nebraska’s recent reforms mandated a period of supervision following release from prison for certain less serious felonies. This is based on evidence that community supervision, coupled with treatment, can significantly reduce recidivism rates.<sup>28</sup> For the large numbers of people with mental health and substance abuse disorders leaving prison, providing services and supports prior to release and upon reentry is critical.

### NEBRASKA PRISON ADMISSIONS BY TOP OFFENSES (2015)



Intensive case management, supportive housing, and benefits advocacy can be as important as mental health and addiction treatment options.

Thanks to this effort, the state now places an increasing number of people released from prison under community supervision and fewer people are “jamming out,” or serving their entire maximum sentences.<sup>29</sup> However, these reforms have not stopped the flow of people returning to prison from parole, which is still on the rise for both new offenses and for breaking the rules of their supervision. In fact, the number of people who returned to prison because their parole was revoked increased by 29 percent between 2015 and 2017.<sup>30</sup>

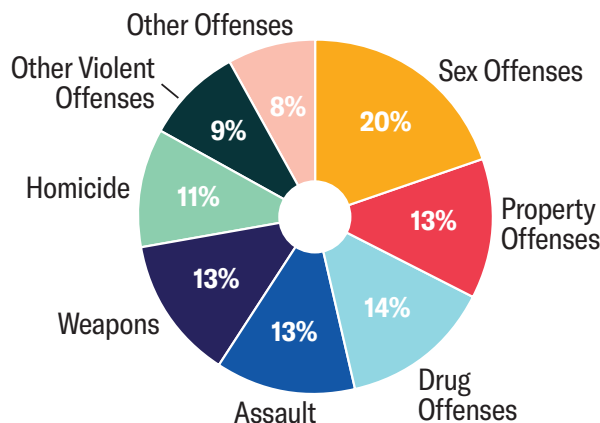
## The Current Prison and Jail Population<sup>31</sup>

Nebraska incarcerated an estimated 2,890 people in county jails in 2015.<sup>32</sup> The rate of incarceration in Nebraska’s jails more than tripled between 1980 and 2015, and the vast majority of the county jail population is awaiting trial and has not been convicted of a crime.<sup>33</sup> In addition, many people sentenced to prison are housed in county jails due to overcrowding in Nebraska’s prisons.<sup>34</sup> Now, the state’s three largest counties — Douglas, Lancaster, and Sarpy — are experiencing a jail overcrowding crisis too.<sup>35</sup>

As of June 2018, nearly half of Nebraska’s prison population<sup>36</sup> was serving time for an offense that did not involve violence. Drug offenses, including possession and distribution, were the second most prevalent offense category in 2018, accounting for 13.5 percent of Nebraska’s prison population. Property offenses, such as theft, burglary, and fraud, made up 13 percent of Nebraska’s prison population.<sup>37</sup>

The average length of time people serve in Nebraska prisons grew in the years leading up to reform. As of 2015, the average person imprisoned in Nebraska had served 4.1 years — 16 percent more time than the average person in 2000. While the average time served for drug and property offenses fell slightly, it increased for people convicted of offenses involving violence during the same period.<sup>38</sup>

## NEBRASKA PRISON POPULATION BY OFFENSE (2018)



Nebraska imposes additional penalties for certain types of crimes and people with criminal histories. These “enhancements” require judges to extend sentences beyond the normal range for those crimes, regardless of the individual circumstances of those cases. Under Nebraska’s “habitual criminal” statute, a person convicted of three offenses with penalties of one year or more is subject to a mandatory minimum sentence of 10 years — and as many as 60 years for the third offense. If two of those offenses are serious crimes, such as murder, assault, or arson, the person is sentenced to at least 25 years in prison.<sup>39</sup> This harsh three strikes policy can keep people in prison for years or even decades, where they “stack up” and contribute to the growing prison population over time.<sup>40</sup>

### AT A GLANCE

## NEBRASKA JAIL POPULATION

**2,890** people were serving time in Nebraska’s county jails as of 2015.

The overwhelming majority of people in Nebraska’s county jails had not been convicted of a crime in 2015.

## AT A GLANCE

### LENGTH OF IMPRISONMENT

The average person imprisoned in 2015 had served **16 percent** more time than the average person in 2000.

People imprisoned in Nebraska in 2015 had served an average of **4.1 years** in prison.

In addition, Nebraska bars people with mandatory minimum sentences from earning “good time” credits for good behavior for the duration of the mandatory sentence, which could otherwise cut the length of their sentence by as much as half and reduce Nebraska’s overcrowding problem. By comparison, people who do not receive mandatory minimum sentences become eligible for parole approximately halfway through their original minimum term.<sup>41</sup>

## Who Is Imprisoned

**Black Nebraskans:** The most recent available data (2014) shows that 1 in 22 Black men is imprisoned in Nebraska.<sup>42</sup> While Black people made up less than 5 percent (4.4 percent) of the state’s adult population in 2017,<sup>43</sup> they constituted 28.4 percent of its prison population.<sup>44</sup> In 2017, Black people were imprisoned at a rate of 2,388 per 100,000 adults – ten times the rate for white adults.<sup>45</sup>

**Native American Nebraskans:** Native Americans constituted less than 1 percent (0.7 percent) of the state’s adult population,<sup>46</sup> yet they made up 4.1 percent of its prison population in 2017.<sup>47</sup> That same year, Native Americans were imprisoned at a rate of 2,047 per 100,000 adults – nine times the rate for white adults.<sup>48</sup>

**Disabled Nebraskans:** A 2015 analysis found that eighty-two percent of people who are incarcerated have a diagnosed mental illness; of those, about half have a substance abuse diagnosis alone, and half have

## AT A GLANCE

### DEMOGRAPHICS

**1 in 22** Black men in Nebraska were imprisoned in 2014.

Native Americans adults were imprisoned at **nine times** the rate of white adults in Nebraska in 2017.

People with mental health and substance use disorders made up **82 percent** of the Nebraska prison population in 2015.

**Nearly half** of women imprisoned in Nebraska were serving time for a theft or drug-related conviction in 2014.

a mental health diagnosis. About twenty-five percent of men and 50 percent of women in prison are on psychotropic medications.<sup>49</sup>

**Female Nebraskans:** The majority of women imprisoned in Nebraska are serving time for offenses that do not involve violence. In 2014,<sup>50</sup> nearly half of the female prison population was serving time for theft or drug-related charges.<sup>51</sup> Like most of the state’s prisons, Nebraska’s only women’s prison is overcrowded; as of 2017, it was operating at 115.2 percent of design capacity.<sup>52</sup> That same year, the ACLU of Nebraska released a detailed report emphasizing the need to address specific issues that women in prison face in the state.<sup>53</sup> For example, women in prison often go without the behavioral health treatment they need – this is especially troubling given that women in prison are even more likely than men to have a history of mental illness and substance use.<sup>54</sup>

**Older Nebraskans:** Nebraska’s prison population is also rapidly aging. Between 2007 and 2014, the number of people age 50 and older increased by 58.1 percent, rising from 13.5 to 18.4 percent of the total prison population.<sup>55</sup> This trend runs contrary to the overwhelming evidence that shows people age 50 and older pose a negligible risk to public safety and are the least likely to return to prison for new offenses

upon release.<sup>56</sup> Legislation passed in 2018 (LB 841) may facilitate the release of some elderly individuals by adjusting the process that allows those who are terminally ill or permanently incapacitated to be considered for medical parole.

## Budget Strains

As Nebraska's prison population has risen, so has the cost burden. In 2016, \$312 of Nebraska's general fund spending was on corrections. Corrections general fund spending increased by 290 percent between 1985 and 2016 – far outpacing spending in other areas, like higher education, which grew by just 57 percent over the same time period.<sup>57</sup>

### AT A GLANCE

## BUDGETS

Nebraska spent **\$312 million** from its general fund on corrections in 2016.

Nebraska increased general fund spending on corrections by **290 percent** between 1985 and 2016.

# Ending Mass Incarceration in Nebraska: A Path Forward

There are many potential policy changes that can help Nebraska end its mass incarceration crisis, but it will be up to the people and policymakers of Nebraska 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.

As the ACLU of Nebraska’s “State House to Prison Pipeline” report shows, there is a clear association between harsh penalties, broad offenses, and the growth of Nebraska’s prison population; accordingly, any effective policy reform must reexamine existing laws and offer smart justice options to address crimes.<sup>58</sup> These reforms should carefully consider how to support people of color and women to combat disparities in the criminal justice system.

## Reducing Admissions

To end mass incarceration, Nebraska must minimize its overreliance on prisons and jails and explore innovative, smart justice alternatives that more effectively respond 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, and also failing to provide rehabilitation for incarcerated people or adequate accountability to the survivors of crime.<sup>59</sup> Here are some strategies:

- **Stop creating new criminal offenses:** Nebraska lawmakers should adopt a “first, do no harm” mentality with regard to the prison system. They should be very skeptical when considering any legislation to create new

chargeable criminal offenses, particularly where it would overlap or duplicate existing offenses. Such duplication can lead to prosecutorial overcharging and layering of multiple offenses for singular criminal acts, which lead to inflated sentences.

- **Alternatives to incarceration:** One way to reduce prison populations is to send fewer people to prison by implementing criminal justice diversion programs that have been successful in other states.<sup>60</sup> Nebraska can divert those who run afoul of the justice system to less invasive and more effective options like problem-solving and specialty courts, expanded mental health and drug treatment programs, and increased efforts to help people reenter society, including benefits advocacy, intensive case management, and housing support. Existing pretrial diversion programs should be broadened to allow for more participants. These alternatives are demonstrably more cost-effective than mass incarceration, and participants generally have lower recidivism rates.<sup>61</sup>
- **Expanded treatment:** Nebraska lawmakers should continue to focus on front-end sentencing reforms, including mental health and substance abuse treatment options. 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. When implemented effectively, diversion reduces arrests, encourages voluntary treatment in

the community, and saves money. Effective diversion programs coordinate with community services that provide a wide range of substantial, quality 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 to save jurisdictions large amounts of money. The Legislature should also continue to consider diversion options post-booking, including specialty courts, such as drug, mental health, and veterans courts.

- **Bond reform:** Nebraska lawmakers, judges, and prosecutors must continue to reform “debtors’ prisons.” Many people in jails are pretrial detainees who cannot make bond.<sup>62</sup> Those who are unable to make bond are more likely to be sentenced to prison.<sup>63</sup> Senators should continue to build on their efforts to address these debtors’ prisons by continuing bond reform, which began with LB 395 and as amended into LB 259, passed in 2017, which seeks to avoid unnecessary incarceration in Nebraska’s jails.<sup>64</sup> The Legislature should also continue to provide for alternatives to “sitting out fines” in jails by building on LB 145 (also passed in 2017), which encourages courts to allow people with low-level charges to satisfy fines through community service and other means, rather than have them be incarcerated.<sup>65</sup>
- **Parole and probation reform:** Nebraska policymakers should consider innovations throughout the country in both probation and parole. For instance, California developed and implemented “non-revocable” parole, which is a lower level of supervision for people convicted of nonviolent charges.<sup>66</sup> This lower level of monitoring for lower-risk people has proven successful, saving the state a significant amount of money in prison and monitoring costs.<sup>67</sup> In addition, many parole revocations can be due to the physical or mental disabilities that many parolees have. Parole and probation officers are required to provide reasonable accommodations

so that parolees with disabilities have an equal opportunity to comply with the requirements of parole. Proper training of parole officers, along with greater awareness of and advocacy for these requirements, could reduce the number of technical violations. State legislators should study innovative and effective solutions in other parts of the country that divert people from prison and apply them to the probation and parole systems.

- **Support reentry:** Nebraska lawmakers must establish and invest in a robust reentry agenda to ensure meaningful support for returning community members to improve individual outcomes and lower recidivism rates.<sup>68</sup> The “end” of the pipeline should provide for a meaningful way for people in the justice system to complete their sentences and move on with their lives in a constructive, law-abiding manner. These legislative efforts should include broadening set-aside and expungement laws for formerly incarcerated people to “clean up” their records. A sound example of reform legislation in this category includes LB 350 (2017).<sup>69</sup> Other key reentry supports include removing barriers to employment through an expansion of “ban-the-box” legislation (LB 420 2017<sup>70</sup>) and occupational licensing reform (LB 299 2018<sup>71</sup>). Nebraska lawmakers should remove barriers to civic engagement and revisit the arbitrary two-year ban on voting rights for those who were convicted of felonies.<sup>72</sup> Finally, the state should provide access to public benefits so that formerly incarcerated people can seek assistance when they need it so they do not revert to criminal activities.<sup>73</sup>

## 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 expressed concerns about the growing use of these courts without proper safeguards. 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 should be voluntary and not require a guilty plea. Specialty court providers should 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 Nebraska's prisons. Here's how:

- **Sentencing reform – general:** From 2007 to 2017, the Nebraska Unicameral passed into law 38 bills that either increased penalties for existing crimes or created new offenses.<sup>74</sup> Many of these bills covered nonviolent crimes. In nearly the same time frame (2005-2015), the prison population rose by 1,000.<sup>75</sup> Nebraska lawmakers need to be very skeptical when considering any legislation that increases penalties. Merely increasing penalties for crimes does not increase enforcement or detection rates, nor does it necessarily aid in the prosecution of crimes.<sup>76</sup>
- **Sentencing reform – enhancements:** Nebraska lawmakers should address and correct the overreach of “get tough on crime” mandatory minimum sentencing laws. Mandatory minimums contribute directly and

indirectly to the growth in the prison population – mandatory sentences are lengthier, and individuals serving mandatory minimums are not eligible for parole, nor can they earn good time off those sentences.<sup>77</sup> In addition, they are often used as leverage to get defendants to plead to charges that will result in lengthier sentences.<sup>78</sup> Good examples of recently introduced sound reforms in this area include LB 172 (2015),<sup>79</sup> LB 483 (2015),<sup>80</sup> LB 781 (2018),<sup>81</sup> LB 842 (2018),<sup>82</sup> and LB 1013 (2018).<sup>83</sup>

- **Parole reform:** Nebraska lawmakers should look to broaden its furlough and supervised-release laws adopted under LB 841 in 2018,<sup>84</sup> in an effort to allow for the release of people in prison who are not presently parole-eligible. Incarcerated people who are not parole-eligible cannot be within the supervision of the Parole Administration. They can, however, be supervised in the community by the Department of Correctional Services. Priority should be placed on releasing elderly or sick individuals on a medical or humane release basis. Incarcerated people who are released for medical reasons are often better served in the community.<sup>85</sup> Additionally, such individuals are costly and staff-intensive to manage in a prison facility.

## Reducing Racial Disparities

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

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.<sup>86</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>87</sup> However, the state did not target racial disparities in incarceration and, in 2016, 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>88</sup>

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.

More investigation into the policy drivers that will decrease disparities is important, but some examples of strategies focused on policies known to disproportionately impact people of color include:<sup>89</sup>

- Ending overpolicing in communities of color<sup>90</sup>
- Evaluating prosecutors' charging and plea-bargaining practices to identify and eliminate bias
- Investing in diversion/alternatives to detention in communities of color
- Reducing the use of pretrial detention and eliminating wealth-based incarceration. The

ACLU of Nebraska's "Unequal Justice" report shows that people of color are disproportionately represented in pretrial populations in comparison to the demographics of the county in which they were incarcerated.<sup>91</sup>

- Ending geography-based sentencing enhancements
- Reducing exposure to reincarceration due to revocations from supervision
- Supporting laws like LR 458,<sup>92</sup> which requires 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
- Ensuring that policy solutions to address gang violence are not overly broad or used as a pretext for furthering negative and inaccurate narratives about youth 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

People with disabilities are two to six times more likely to come into contact with the criminal justice system than people without disabilities.<sup>93</sup> In particular, people with psychiatric disabilities are dramatically overrepresented in jails and prisons across the country.<sup>94</sup>

- People showing signs of mental illness are twice as likely to be arrested as people without mental illness for the same behavior.<sup>95</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>96</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 may not be able to participate in rehabilitative programming, such as educational or vocational classes.<sup>97</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>98</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>99</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 can 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

## 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 to charge enhancements that require the imposition of prison sentences.

**Parole boards:** They decide when to allow people to leave prison. In Nebraska, the parole board is an especially important player when it comes to ensuring the parole system works effectively by offering supervised release options so more Nebraskans can return to their communities and seek treatment services that are presently unavailable in overcrowded and under-resourced prisons.<sup>102</sup> Educating parole boards on their obligations to take mental and other disabilities into account when evaluating the records of people who are incarcerated may help provide earlier release for those whose disciplinary records reflect conduct that arises due to 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. For instance, reforms like LB 259,<sup>103</sup> which update Nebraska's outdated court proceedings regarding debtors' prisons, will be effective only if judges choose to implement them.

**State lawmakers:** They decide which actions 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. As the ACLU of Nebraska's "State House to Prison Pipeline" report showed, lawmakers can create new alternatives or provide the resources and direction for others to develop new alternatives.<sup>104</sup>

disability disparities.<sup>100</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>101</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 Nebraska 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 Nebraska, 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>Drug offenses</b>	<ul style="list-style-type: none"> <li>Reduce average time served for all drug offenses by 80% (from 1.32 to 0.26 years)</li> <li>Institute alternatives that reduce admissions for all drug offenses by 70% (344 fewer people admitted)</li> </ul>	10.07% reduction (610 fewer people)	White: 1.9% decrease Black: 2.8% increase Hispanic/Latino: 4.2% increase Native American: 5.0% decrease Asian: 3.7% decrease Hawaiian/Pacific Islander: 11.2% increase Other: 2.2% increase	\$9,542,609
<b>Public order offenses*****</b>	<ul style="list-style-type: none"> <li>Reduce average time served by 80% (from 2.73 to 0.55 years)</li> <li>Institute alternatives that reduce admissions by 70% (159 fewer people admitted)</li> </ul>	9.21% reduction (558 fewer people)	White: 1.0% increase Black: 2.8% decrease Hispanic/Latino: 1.3% increase Native American: No change Asian: 1.5% decrease Hawaiian/Pacific Islander: 10.1% increase Other: 0.4% decrease	\$7,844,071
<b>Assault</b>	<ul style="list-style-type: none"> <li>Reduce average time served by 70% (from 2.52 to 0.76 years)</li> <li>Institute alternatives that reduce admissions by 50% (113 fewer people admitted)</li> </ul>	7.91% reduction (479 fewer people)	White: 1.9% increase Black: 2.1% decrease Hispanic/Latino: 2.3% decrease Native American: 3.1% decrease Asian: 2.3% decrease Hawaiian/Pacific Islander: 14.3% decrease Other: 11.1% decrease	\$6,537,421
<b>Robbery</b>	<ul style="list-style-type: none"> <li>Reduce average time served by 70% (from 4.36 to 1.31 years)</li> <li>Institute alternatives that reduce admissions by 50% (45 fewer people admitted)</li> </ul>	5.47% reduction (331 fewer people)	White: 2.7% increase Black: 6.3% decrease Hispanic/Latino: 1.4% increase Native American: 2.0% decrease Asian: 5.8% increase Hawaiian/Pacific Islander: 5.8% increase Other: 3.0% decrease	\$4,016,150

**Impact Compared to 2025 Baseline\***

<b>Offense category**</b>	<b>Policy outcome</b>	<b>Prison population impact</b>	<b>Impact on racial and ethnic makeup of population***</b>	<b>Cost savings****</b>
<b>Burglary</b>	<ul style="list-style-type: none"> <li>Reduce average time served by 70% (from 2.08 to 0.62 years)</li> <li>Institute alternatives that reduce admissions by 50% (88 fewer people admitted)</li> </ul>	5.08% reduction (308 fewer people)	White: 0.9% decrease Black: 1.3% increase Hispanic/Latino: 0.3% increase Native American: 2.1% increase Asian: 5.4% increase Hawaiian/Pacific Islander: 5.4% increase Other: 2.0% increase	\$4,355,408
<b>DWI</b>	<ul style="list-style-type: none"> <li>Reduce average time served by 80% (from 1.50 to 0.30 years)</li> <li>Institute alternatives that reduce admissions by 70% (131 fewer people admitted)</li> </ul>	4.37% reduction (264 fewer people)	White: 0.8% decrease Black: 2.0% increase Hispanic/Latino: 0.3% increase Native American: 3.2% decrease Asian: 1.5% decrease Hawaiian/Pacific Islander: 16.6% decrease Other: 4.6% increase	\$4,161,664
<b>Theft</b>	<ul style="list-style-type: none"> <li>Reduce average time served by 80% (from 1.21 to 0.24 years)</li> <li>Institute alternatives that reduce admissions by 70% (157 fewer people admitted)</li> </ul>	4.21% reduction (255 fewer people)	White: 1.8% decrease Black: 1.6% increase Hispanic/Latino: 3.4% increase Native American: 2.9% increase Asian: 2.4% increase Hawaiian/Pacific Islander: 4.4% increase Other: 4.4% increase	\$3,986,968
<b>Weapons offenses*****</b>	<ul style="list-style-type: none"> <li>Reduce average time served by 70% (from 6.25 to 1.88 years)</li> <li>Institute alternatives that reduce admissions by 20% (7 fewer people admitted)</li> </ul>	2.09% reduction (127 fewer people)	White: 0.8% increase Black: 1.3% decrease Hispanic/Latino: 0.9% decrease Native American: 0.2% increase Asian: 2.1% increase Hawaiian/Pacific Islander: 2.1% increase Other: 2.1% increase	\$1,457,446

Impact Compared to 2025 Baseline*				
Offense category**	Policy outcome	Prison population impact	Impact on racial and ethnic makeup of population***	Cost savings****
Fraud	<ul style="list-style-type: none"> <li>Reduce average time served by 80% (from 1.41 to 0.28 years)</li> <li>Institute alternatives that reduce admissions by 70% (53 fewer people admitted)</li> </ul>	1.66% reduction (100 fewer people)	White: 0.4% decrease Black: 0.3% increase Hispanic/Latino: 1.3% increase Native American: 0.8% increase Asian: 1.5% decrease Hawaiian/Pacific Islander: 1.7% increase Other: 6.9% decrease	\$1,639,487

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

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

\*\*\*This column represents the percent change in the share of the prison population made up by each racial/ethnic group. It compares the proportion of the population made up by a group in the 2025 baseline prison population to the proportion of the population made up by that group when the reform scenario is applied. We then calculate the percent change between those two proportions. Racial and ethnic disproportionality is traditionally measured by comparing the number of people in prison – of a certain race – to the number of people in the state’s general population of that same race. For example, nationally, Black people comprise 13 percent of the population, while white people comprise 77 percent. Meanwhile, 35 percent of people in state or federal prison are Black, compared to 34 percent who are white. While the proportion of people in prison who are Black or white is equal, Black people are incarcerated at nearly three times their representation in the general population. This is evident in Nebraska, where Black people make up 27.7 percent of the male prison population but constitute only 4.3 percent of the state’s total adult male 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 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 weapons offenses include unlawful possession, sale, or use of a firearm or other type of weapon (e.g., explosive device).

## Total Fiscal Impact

If Nebraska were to carry out reforms leading to the changes above, 3,032 fewer people would be in prison in Nebraska by 2025, a 50.06 percent decrease. This would lead to a total cost savings of \$139,489,625 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 Nebraska’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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