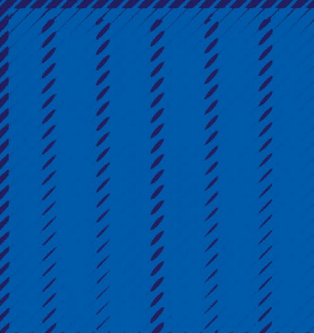


Blueprint for Smart Justice
New Hampshire



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New Hampshire

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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, poverty, and broken 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. The mass incarceration crisis has transformed American society, has damaged families and communities, and has 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. Policymakers at the state and federal levels instead must invest in alternatives to prison and approaches better designed to break the cycle of crime and recidivism, which also 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 kind 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 New Hampshire — where the Black adult incarceration rate was more than five times as high as the white adult incarceration rate in 2016¹ — reducing the number of people imprisoned will not on its own reduce racial disparities within the prison system. These findings confirm 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 in many states across the country, the New Hampshire prison population has grown dramatically in recent decades. Between 1980 and 2016, the population increased in size nearly nine-fold.² While many different offenses lead people to New Hampshire's prisons, drug offenses accounted for 21 percent of all admissions in 2015.³ Between 2006 and 2016, admissions to New Hampshire prisons increased by 24 percent.⁴ This growth can be attributed in large part to an increase in admissions for violations of parole and probation. These community supervision violations accounted for 60 percent of all admissions to New Hampshire prisons in 2016.⁵

Increasingly long prison terms for certain offenses in New Hampshire have contributed to the size of the

state's prison population. Between 2011 and 2015, the median time served for people with property offenses increased 80 percent, and the average time served for drug offenses increased 85 percent over the same period.⁶ In 2016, 40 percent of people in New Hampshire prisons had a maximum sentence of more than 10 years.⁷

In addition to prisons, New Hampshire incarcerates an estimated 1,613 people in jails, according to the most recently available data.⁸ Prior to the implementation of bail reform, 69 percent of people in New Hampshire jails in 2015 were being held pretrial and had not been convicted of a crime. This percentage has declined since the September 2018 implementation of new legislation that prevents the pre-trial detention of people simply because they cannot afford bail.⁹

All of this incarceration is expensive: The state spent \$109 million from the general fund on corrections in 2017.¹⁰

So, what's the path forward?

New Hampshire lawmakers have already made significant efforts to reduce incarceration by enacting bail reform and decriminalizing up to three-quarters of an ounce of marijuana, among other reforms. The New Hampshire Department of Health and Human Services is also implementing changes to substance use disorder (SUD) treatment centers through the funding of a large federal grant, which will help the state address the growing crisis of opioid use.

Still, work remains to be done. Stakeholders should continue their work on reducing the state's reliance on incarceration by ensuring that there are alternatives to incarceration for people with mental health needs and substance use issues. In particular, the governor and state legislature must leverage their budgetary authority to ensure these kinds of programs can be funded. Ultimately, this investment can save New Hampshire and its counties money.¹¹

The legislature can also support decarceration efforts by enacting sentencing, probation, and parole reform. In particular, a system of graduated sanctions for probation and parole violations should

be implemented by state supervision agencies, and the legislature should prohibit incarceration for people whose violations of community supervision do not involve a new conviction. The legislature can also reduce the number of people in prison by amending New Hampshire's criminal code to reduce sentencing ranges, particularly for drug offenses, burglary, robbery, public order offenses, and assault.

Occupational licensing reform is also an important step the legislature can take in conjunction with the governor and the Office of Professional Licensure and Certification. By limiting inquiry into most applicants' criminal records, formerly incarcerated people in New Hampshire have a greater chance at securing employment and contributing to our communities. Laws that require the suspension or revocation of drivers' licenses as consequence of non-motor vehicle related offenses should also be repealed, as these laws make it difficult for people to maintain jobs, visit family, and access healthcare. These are just a few of the steps included in this report that criminal justice stakeholders in the state can take to reduce the incarcerated population in New Hampshire.

If New Hampshire were to adopt the changes outlined in this Smart Justice 50-State Blueprint's forecaster chart and achieve a 50 percent reduction in its prison population, the state could save more than \$91 million by 2025 – money that could be better spent on schools, infrastructure, and services for the people of New Hampshire.

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

The State of the New Hampshire Prison System

The New Hampshire prison population has soared in recent decades, growing nearly nine-fold between 1980 and 2016.¹² As of June 30, 2016, there were 2,738 people in New Hampshire prisons, 21 percent more than in 2000.¹³

While the national state imprisonment rate dropped by seven percent between 2000 and 2016, New Hampshire's rate of imprisonment grew by 16 percent.¹⁴

What Is Driving People Into Prison?

In New Hampshire, a litany of offenses drives people into prisons. In 2015, drug offenses were the most common offenses¹⁵ for people entering New Hampshire prisons, accounting for 21 percent of all prison admissions.¹⁶ Other common offenses included

AT A GLANCE

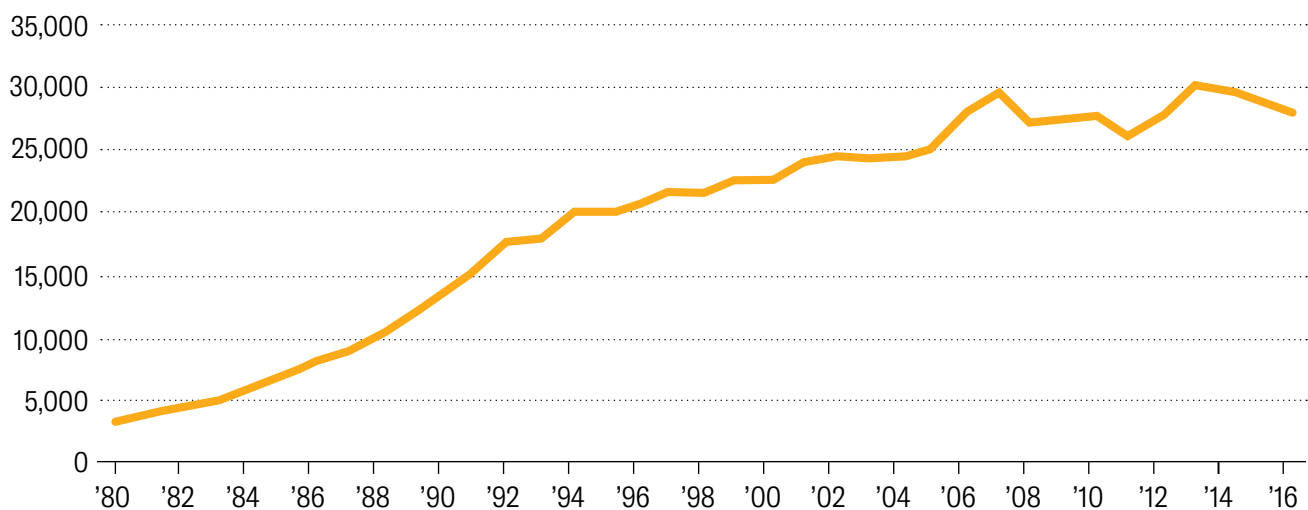
NEW HAMPSHIRE PRISONS

New Hampshire's imprisonment rate grew **16 percent** between 2000 and 2016.

Between 1980 and 2016, New Hampshire's prison population grew nearly **nine-fold**.

assault (11 percent), burglary (10 percent), theft (9 percent), and robbery (8 percent). Overall, property offenses accounted for nearly one in three (31 percent) admissions to New Hampshire prisons that year.¹⁷

NEW HAMPSHIRE PRISON POPULATION



Annual admissions to New Hampshire prisons grew 24 percent between 2006 and 2016. In 2016,¹⁸ New Hampshire admitted 1,594 people to state prisons.¹⁹

Much of the recent increase in annual admissions in New Hampshire can be attributed to an increase in admissions for violations of parole and probation, which grew 47 percent between 2006 and 2016. In 2016, community supervision violations accounted for 60 percent of admissions to New Hampshire prisons.²⁰

Many of these people were returned to prison for a technical violation of the conditions of their supervision and had not committed a new offense. Technical violations are non-criminal transgressions, such as missing an appointment with a parole officer, failing to pay fines and fees, or failing a drug test.²¹ Of the 576 people who returned to prison within three years of their release in 2014, 69 percent were returning for a technical violation of parole; only 31 percent returned to prison for a new sentence.²²

New Hampshire has harsh sentencing laws that trigger mandatory prison sentences in many cases, including when a person has prior felony convictions. Under state law, judges are required to impose sentences up to life imprisonment without the possibility of parole for certain offenses for people with prior convictions.²³ Laws with mandatory requirements such as these can require prison sentences for people who would

AT A GLANCE

NEW HAMPSHIRE JAIL AND PRISON POPULATION

Annual admissions to New Hampshire prisons grew **24 percent** between 2006 and 2016.

One in seven people in New Hampshire prisons in 2015 was serving time for a drug offense.

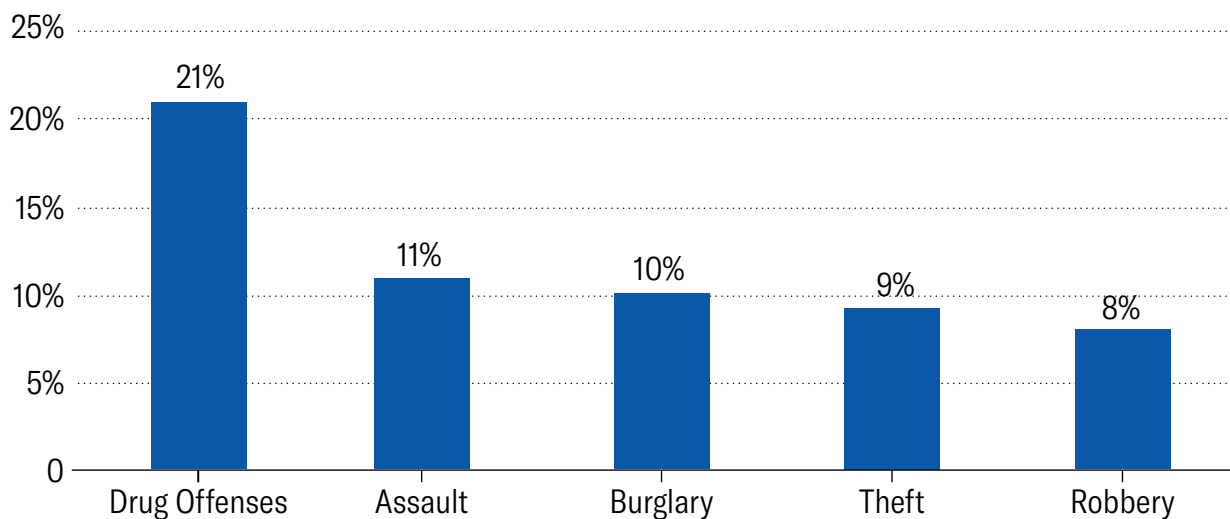
In 2016, community supervision violations accounted for **60 percent** of prison admissions in New Hampshire.

otherwise be eligible for probation or other alternative programming.

The Current Prison and Jail Population

In addition to people held in state prisons, New Hampshire incarcerates an estimated 1,613 people in county jails, according to the most recently available data (2015).²⁴ The majority of those in jail in 2015

NEW HAMPSHIRE PRISON ADMISSIONS BY TOP OFFENSE TYPE (2015)



— 1,120 people, or 69 percent — were being held pretrial and had not been convicted of a crime.²⁵ In August 2018, the New Hampshire Legislature passed a bail reform bill to prevent people from being detained pretrial simply because they cannot afford bail, which has led to a decrease in the jail population.²⁶

In New Hampshire, it is illegal to put someone in jail for inability to pay their legal fines, yet a 2017 report from the ACLU of New Hampshire found that this practice remains common across circuit courts in the state.²⁷ In response to the ACLU’s report, New Hampshire’s legislature and governor enacted a bipartisan “debtors’ prison” bill to curb this practice by appointing counsel when a person is threatened with jail time because they are unable to afford a fine.²⁸ More work remains to be done.

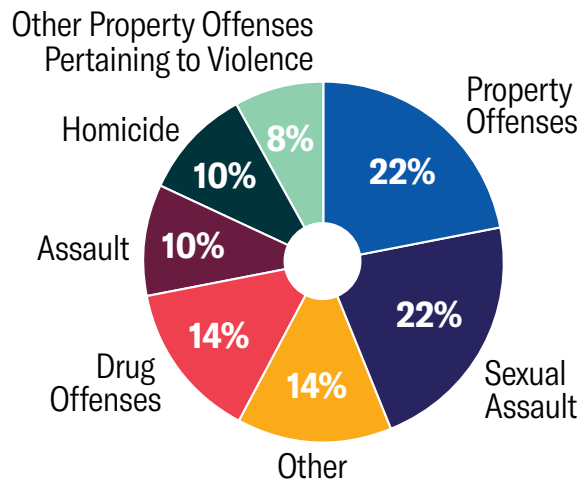
As of 2015, drug offenses account for one in seven (14 percent) people in prison in New Hampshire, of which more than half (51 percent) had drug possession as a controlling offense. Other common offenses in New Hampshire prisons include assault (10 percent), burglary (7 percent), and theft (7 percent). Overall, property offenses account for more than one in five (22 percent) people in New Hampshire prisons.²⁹

Why Do People Stay in Prison for So Long?

As in many states, increasingly long prison terms for certain offenses have contributed to the size of New Hampshire’s prison population. Between 2011 and 2015, the median length of time that people released from New Hampshire prisons had served increased 57 percent. Some of this increase can be attributed to an 80 percent increase in the median time served for people with property offense convictions as well as an 85 percent increase for people with drug offense convictions.³⁰ In 2015, the average person in New Hampshire prisons had already spent nearly 4 years imprisoned.³¹

The proportion of people in New Hampshire prisons serving long sentences is increasing, and in 2016, approximately 40 percent of people in New Hampshire prisons had a maximum sentence length of more than

NEW HAMPSHIRE PRISON POPULATION BY OFFENSE TYPE (2015)



10 years. Between 2009 and 2016, the number of people serving the longest sentences (having a maximum sentence length of 21 years or more) increased 10 percent.³²

Alongside these changes in time served, parole grant rates have declined. In 2014 (the most recent year of available data), New Hampshire’s parole board heard 1,856 cases and granted only half (51 percent). The number of parole hearings conducted has increased

AT A GLANCE

LENGTH OF IMPRISONMENT AT A GLANCE

The median length of time served by people released from New Hampshire prisons grew **57 percent** between 2011 and 2015.

New Hampshire’s parole grant rate dropped by **37 percent** between 2004 and 2014.

In 2016, approximately **40 percent** of people in New Hampshire prisons were serving sentences with a maximum length of over 10 years.

significantly, growing 71 percent between 2004 and 2014, but the grant rate has declined, dropping 37 percent over that same time period, resulting in only a 9 percent increase in parole approvals.³³

New Hampshire’s sentencing laws include severe “truth in sentencing” requirements, which require people sentenced to prison to serve 100 percent of their minimum sentence before becoming eligible for parole. The state offers no option to earn time off a minimum sentence through participation in programs and treatments that are shown to improve reentry outcomes. Instead, 150 days of “bad time” are automatically added to each year of a person’s minimum sentence, with the opportunity to earn time against those days for good behavior or delay parole hearings in response to any disciplinary problems that arise.³⁴ In 2016, approximately 11 percent of New Hampshire’s prison population was serving a minimum sentence of over ten years.³⁵

Who Is Imprisoned

Black Adults: Incarceration in New Hampshire has a disproportionate impact on communities of color. In 2016, the Black adult incarceration rate in New Hampshire was more than five times as high as the white adult incarceration rate. Although Black people accounted for only 1 percent of the adult population in New Hampshire that year, they constituted 7 percent of the prison population.³⁶ As of 2014, one in every 41 Black men in the state was imprisoned.³⁷

Women: Between 2006 and 2016, the number of women in New Hampshire prisons increased by 32 percent while the number of men in New Hampshire prisons decreased by 2 percent.³⁸ According to the most recently available data, women accounted for 8 percent of the state’s total prison population in 2016 and 17 percent of the total jail population in 2015.³⁹

Older People: Though generally considered to pose a negligible risk to public safety, the prison population older than 50 years increased 35 percent between 2008 and 2016, when they accounted for one in five people (21 percent) in New Hampshire prisons.⁴⁰

AT A GLANCE

DEMOGRAPHICS AT A GLANCE

The number of women imprisoned in New Hampshire rose by **32 percent** between 2006 and 2016.

In 2016, the Black adult incarceration rate in New Hampshire was more than **5 times** as high as than the white adult incarceration rate.

In 2016, **1 in 5** people in New Hampshire prison was over 50 years old.

People With Mental Health and Substance Use Disorders

Mental health treatment needs are prevalent in the New Hampshire prison population. In FY 2016, the Department of Correction’s Behavioral Health Services served a total of 1,933 people (71 percent of the prison population) with varying treatment needs.⁴¹ In FY 2016, 193 women and 1,740 men in New Hampshire prisons received behavioral health treatment.⁴² The top treatment diagnoses for men in New Hampshire prisons were post-traumatic stress disorder, depressive disorders, mood disorders, and opioid use disorders. The top treatment diagnoses for women in New Hampshire prisons were depressive

AT A GLANCE

MENTAL HEALTH AND SUBSTANCE USE DISORDERS

71 percent of the prison population received behavioral health services in 2016.

PTSD, mood disorders, and opioid disorders are common treatment diagnoses among people in New Hampshire’s prisons.

AT A GLANCE

BUDGET AT A GLANCE

New Hampshire's general fund corrections spending has grown **225 percent** since 1986.

Nearly half of people released from New Hampshire prisons in 2014 were reincarcerated within three years of release.

disorders, anxiety disorders, opioid use disorder, and post-traumatic stress disorder.⁴³

Budget Strains

As the New Hampshire prison population has risen so has the cost burden. New Hampshire spent 109 million general fund dollars on corrections in 2017, accounting for 7 percent of the state's general fund expenditures. These costs have grown 225 percent between 1986 and 2017, while spending on other state priorities, like higher education, fell by 5 percent over the same period of time.⁴⁴

Return on investment for incarceration has consistently been poor. Although 78 percent of the 2016 Department of Corrections budget was spent on operation of prisons,⁴⁵ nearly half (45 percent) of the people released from New Hampshire prisons in 2014 returned to prison within three years of their release.⁴⁶ In 2016, New Hampshire spent an average of \$35,832 to imprison one person for a year.⁴⁷

Ending Mass Incarceration in New Hampshire: A Path Forward

Mass incarceration is a result of many systems failing to support our communities. To end it, we must develop policies that better address inadequacies throughout our education, health care, and economic systems – to name a few. In addition, New Hampshire is experiencing an opioid crisis with record-high opioid deaths and overdoses.⁴⁸ Rather than dedicating more resources to substance use prevention and treatment, the state has responded by sending more people to jails and prisons, thereby further contributing to mass incarceration.

New Hampshire has already taken important strides with criminal justice reform. This includes comprehensive debtors' prison and bail reform and the decriminalization of up to three-quarters of an ounce of marijuana.⁴⁹ New Hampshire should build upon this progress by continuing to reduce its reliance on mass incarceration.

Systemic criminal justice reform in New Hampshire must focus on (1) less punishment for addiction and mental illness; (2) sentencing, probation, and parole reform; and (3) reducing fines and fees imposed on individuals who are formerly incarcerated. To reach a 50 percent reduction, policy reforms like these will reduce the number of people entering jail and prison in the first place, the amount of time people serve in prisons as well as local jails, and the number of re-admissions or post-sentencing admissions for probation and parole violations or an inability to pay burdensome financial assessments.

Reducing Admissions

To end mass incarceration, New Hampshire must break its overreliance on jails and prisons as a means to hold people accountable for their crimes and as a means to manage addiction issues. Evidence indicates that prisons seldom offer adequate solutions to wrongful behavior. In fact, imprisonment can be counterproductive – increasing cycles of harm and violence and failing to provide rehabilitation for incarcerated people or adequate accountability to the survivors of crime.⁵⁰

Here are some strategies:

- **Expanded treatment for addiction:** Substance use disorders are often underlying drivers of a substantial number of crimes, including and especially more serious offenses like burglaries, robberies, and assaults. The New Hampshire Department of Health and Human Services recommended to the 2018 Bail Commission (created by Senate Bill 556) that addiction is best managed in an environment outside prison and jail walls.⁵¹ Addressing substance abuse through treatment rather than incarceration can more effectively reduce crime.⁵² Fortunately, the Department of Health and Human Services is implementing dramatic changes in the quantity and organization of substance use disorder (SUD) treatment funded by a large federal grant. In 2019, the state will support nine regional treatment centers, each offering intensive care for people with opioid use disorder, operating together as one care system (known as Hub-and-Spoke).⁵³ Careful attention must be paid to the integration of criminal justice

system needs into the proposed Hub-and-Spoke approach, ensuring treatment is served outside the confines of county jails.

- **Expanded treatment for mental health:** Mental health diversion is an effective way to redirect people with disabilities out of the criminal legal system and into supportive community treatment. Mental-health diversion programs have been shown to be effective for people charged with both nonviolent and violent offenses.⁵⁴ When implemented effectively, diversion reduces arrests, encourages voluntary treatment in the community, and saves money.⁵⁵ 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.⁵⁶ Funding of New Hampshire’s county-based community mental health services continues to be a challenge. Part of the challenge includes the lack of available community-based and state emergency-commitment beds and the lack of due process and funding for such admissions. The governor and legislature should leverage their budgetary powers to provide the necessary fiscal appropriations for such initiatives.
- **Alternatives to incarceration:** Several types of alternative-to-incarceration programs have shown great success in reducing both violent and nonviolent criminal activity. Programs offering support services such as substance use treatment, mental health care, employment, housing, health care, and vocational training – often with a community service requirement – have significantly reduced recidivism rates for participants.⁵⁷ For crimes involving violence, restorative justice programs – which 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 been demonstrated to reduce recidivism for defendants,⁵⁸ they also decrease symptoms of post-traumatic stress in victims of crime.⁵⁹ In New Hampshire, alternatives to incarceration – such as drug court and diversion programs – are managed at both the state and county levels, but they suffer from funding disparities between the two and overall funding shortfall. To ensure that each county can provide sufficient alternative-to-incarceration programs, the legislature should invest base-line funding to each county earmarked for these services.

- **Reducing probation and parole revocations:** The conditions of an individual’s community supervision should adhere to the risk-need-responsivity principle, which ensures the level and parameters of supervision are aligned and lead to better public safety and rehabilitation outcomes. To properly adopt this principle, New Hampshire’s supervision agencies should implement a system of graduated sanctions for probation and parole violations. Further, the legislature should also pass laws to create a right to counsel for people accused of violating the conditions of their parole (like the right to counsel that currently exists for people accused of violating the conditions of their probation) and explicitly prohibit incarceration in cases of violations that do not involve a new conviction.

Since probation and parole agencies are required to provide reasonable accommodations to people with disabilities, they should provide proper training for officers on greater awareness of and advocacy for these requirements. This would allow people with disabilities to have an equal opportunity to comply with the requirements of parole and could reduce the number of technical violations that often result in severe punishment.

- **Probation reform:** A pivotal starting point for probation reform is to eliminate the one-size-fits-all set of probation conditions that apply to all persons on probation. A more tailored set of conditions would help reduce probation violations, including those that result in a return

to prison or a first-time prison sentence. For example, imposing a fee on everyone sentenced to probation does not take into account that many who are on probation are indigent, do not have a job, or survive on exempted income. An important starting point for reform would be to eliminate or significantly reduce the imposition of probation fees, reducing the likelihood that a person ends up in jail or prison because they are indigent.

- **Financial penalties:** The abundance of financial penalties can result in formerly incarcerated people owing money to the government for years or even decades after they have completed their sentence. This includes parole, probation, and Office of Cost Containment fees. The legislature should pass a law requiring judges to make an explicit ability-to-pay finding when considering the imposition of a financial penalty. This could remove an unfair and oppressive burden on those unable to afford any monetary assessment and would further encourage sentencing judges to seek out and rely on alternative sentencing options.

Further, despite recent reforms, someone's experience with the criminal legal system continues to vary dramatically based on one's income. The legislature and the Administrative Office of the Courts should each conduct a comprehensive review of rules governing fines and fees within the criminal legal system and seek to remove bias to penalize and jail people simply due to their financial condition.

- Such a review should consider:
Eliminating – or at least reducing – fees associated with probation, annulment, criminal record checks, and driver's license reinstatement;
- Eliminating the Office of Cost Containment, which collects money from individuals found indigent and provided a public defender;

“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.”⁷⁸

– From *The New Jim Crow*, Michelle Alexander

- Eliminating cost of care laws, which enable the government to seek money from current and formerly incarcerated people for the cost of their incarceration;
 - Reforming restitution practices; and
 - Reducing reliance on and imposition of financial penalties in sentencing.
- **Prosecutorial reform:** Prosecutors are the most powerful actors in the criminal legal system with the ability to wield the power of the state against an individual to deprive that person of life, liberty, and property. The initial decisions of whether to charge someone with crimes – and, if so, what and how many – have a major impact on every aspect of a person's experience with the system, not least of which is the amount of time someone faces and eventually serves incarcerated. The state and county governments should create oversight mechanisms to review and assess prosecutorial performance, including decisions made on whom to charge, what charges to impose, and what penalties to seek. Such oversight should include consideration of racial disparities in charging and sentencing.

- **Bail reform:** New Hampshire adopted comprehensive bail reform, known as the Criminal Justice Reform and Economic Fairness Act of 2018.⁶⁰ Under the law, county attorneys must prove by clear and convincing evidence that the individual is “dangerous” in order to incarcerate them pretrial. This law was designed to prevent people from being held in jails due to a financial inability to pay bail. Pre-trial jail populations have decreased dramatically in the initial months since the reforms went into effect, but these reforms must be sustained and advanced. Moving forward, courts should better integrate diversion and SUD treatment programs with the criminal justice system to improve the treatment resources available to those at the front end of the criminal justice system, including those released pre-trial. With better integration, more people could be released pre-trial into treatment programs.
- **DMV consequences:** New Hampshire over-relies on drivers’ license suspensions and revocations as a means of punishment. For a rural state, such penalties can be particularly harmful, preventing people from accessing employment, visiting children and family, and accessing health care. This practice has severe consequences. For instance, if a person lives in an area where there is no alternative means of reaching their workplace and are pulled over while driving without a license, they may be subjected to incarceration. Further, not having a license can serve as a barrier to employment, which in turn can contribute to recidivism. Engaging in prosocial activities makes people less likely to engage in riskier behavior, and job stability has proven to reduce recidivism.⁶¹ Laws that result in the suspension or revocation of a driver’s license as a consequence of non-motor vehicle related offenses should be repealed, as these laws unnecessarily make it more difficult for people to access employment and engage with their communities. Moreover, lawmakers should suspend renewal requirements for driver’s licenses while people are incarcerated, preventing someone’s license from expiring if serving a prison term less than five years.
- **Fair chance hiring:** Reliable employment is one of the most significant factors in reducing recidivism and ensuring successful re-entry.⁶² People should have a fair chance when applying for a job to have their qualifications genuinely considered, rather than automatically dismissed by virtue of a checked “record” box. The New Hampshire Legislature should pass a law to prohibit employers from inquiring into a person’s history of arrest or conviction on a job application. Instead, any inquiry into someone’s record should be deferred until the interview phase, by which time an employer has considered the applicant’s qualifications and wherein an applicant has the opportunity to explain their record in context, including rehabilitation undertaken since an offense.
- **Occupational licensing reform:** Licensure applications often ask about someone’s criminal record upfront, which deters people from applying and ultimately can impact the decisions on whether to grant them licensure. Further, without uniformity, the handling of applicants’ criminal records during a review process results in inconsistencies. This creates confusion and raises questions about why a criminal record is asked about in one application process and not another. The legislature and governor, in consultation with the Office of Professional Licensure and Certification (OPLC), should support legislation to limit inquiry into one’s criminal record to only those professions for which there are state or federal laws prohibiting certain convictions or any criminal history. Moreover, the legislature should pass a law to prohibit occupational licensing applications from using undefined standards such as “good moral character” or “moral turpitude” language, which are subjective standards that can be used to discriminate against formerly incarcerated applicants.
- **Employment assistance:** The legislature should appropriately fund the Department of

Corrections, the Department of Employment Security, and the county houses of corrections to establish in-prison, halfway house, and in-jail formal job-skills training programs. These programs could include assistance in writing a resume, interview skills, and job search tools as well as training for licensure.

- **Data collection:** In order to understand and effectively address the drivers of mass incarceration, stakeholders must have access to comprehensive and reliable data on the criminal legal system. Unfortunately, an overarching problem in the pursuit of criminal legal reform in New Hampshire is the lack of data. The legislature should mandate data collection from the courts, state prison, and county houses of corrections. This would significantly help reform efforts, including helping to identify needed areas of reform and to make the case for specific reform efforts. This includes but is not exclusive to data on demographics, prison and jail populations, recidivism rates, and the number of people with mental health needs and substance use disorders currently in the criminal legal system.

Reducing Length of Stay

- **Sentencing reform:** The legislature should amend the state’s criminal code to reduce sentencing ranges, including and especially for drug offenses, burglary and other property offenses, robbery, and public order offenses. Reducing the amount of time people serve, even by just a few months, can lead to hundreds of fewer people in New Hampshire’s prison and jails. The very long sentences for some in state prison suggest a re-examination of the effectiveness of such sentences is overdue. The resources used to impose long incarceration sentences are wasted, and could prove counterproductive, if the rehabilitative effect of a sentence diminishes over time. An evaluation into the rehabilitative value of certain sentences could contribute to sentencing reform as well as

parole and probation reform, with consideration for eligibility criteria and timelines.

- **Reduce drug sentences:** Ending the criminalization of addiction is a must for criminal justice reform. This includes reducing reliance on incarceration for people with substance use disorders and resulting offenses. The legislature should pass several sentencing reform laws to better address drug use. For example, given the disproportionate number of Granite Staters in prison and jail on drug charges, reducing first-time personal-use drug possession to a misdemeanor for all categories of drugs would be a significant first step. This could be modified to apply only to certain quantities depending on the drug. Second, a reconsideration of the amounts that define the line between personal use and sale amounts of drugs would provide metrics more in line with actual drug usage.
- **Raise felony thresholds:** As the state moves to address disproportionality in sentencing, the legislature should increase the felony threshold for theft to \$2,500. Current law sets the felony threshold at anything above \$1,000, meaning a person that steals one cell phone and case could have their life completely changed as they would face prison time and severe collateral consequences that accompany a felony conviction. Raising the felony threshold would also restrain open-ended prosecutorial discretion that gravitates towards the more serious charge and a longer sentence.
- **End mandatory minimums:** The legislature should pass comprehensive sentencing reform eliminating mandatory minimums – sentences created by legislatures requiring a person to serve a specific amount of time in prison based on offense, rather than allowing the court to consider the facts and circumstances of each individual case. Removing mandatory minimums would empower the judiciary to hand down more proportional sentences and move away from a one-size-fits-all approach that keeps people incarcerated for decades.

- **Presumptive and expansive parole:** The legislature should pass presumptive parole legislation and expand parole eligibility across offenses. Presumptive parole is a release mechanism that requires release to community supervision based on statutory eligibility, without a hearing or any action from the state’s parole board (or other agency that governs release from prison). In addition to crucial legislative changes, the parole process must be fair and transparent. In a recent report grading state paroling authorities, the New Hampshire Adult Parole Board received a D-minus⁶³ for failing to require an objective, evidence-based rationale for parole denials; this information should be documented and publicly reported. New Hampshire’s Adult Parole Board should also grant petitioners access to their records, ensure timely re-hearings and establish appeal rights.
- **Expand earned time credit programs:** New Hampshire should also expand the availability of earned time credits against a prison sentence through participation in educational, vocational, and other opportunities. Such programs incentivize compliance, lead to lowered corrections costs, and reduce recidivism.⁶⁴ Eligibility to participate is often tied to a state’s sentencing policies. New Hampshire currently limits eligibility to those in the least restrictive security classifications of general population and minimum security.⁶⁵ The legislature and Department of Corrections should ensure laws and regulations passed to structure the earned time credit program do not exclude people based on offense or classification within the prison.

Reducing Racial Disparities

Reducing the number of people who are imprisoned in New Hampshire 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 post-release opportunity.⁶⁶ 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 2012.⁶⁷ However, the state did not target racial disparities in incarceration, and in 2014, Black people in New Jersey were still more than 12 times as likely to be imprisoned as white people — the highest disparity of any state in the nation.⁶⁸

Ending mass incarceration is critical to eliminating racial disparities, but it is insufficient without companion efforts that take aim at other drivers of racial inequities outside of the criminal justice system. Reductions in disparate imprisonment rates require implementing explicit racial justice strategies.

Some examples include:

- Ending over-policing in communities of color
- Evaluating prosecutors’ charging and plea-bargaining practices to identify and eliminate bias

- Investing in diversion/alternatives to detention in communities of color
- Reducing the use of pretrial detention and eliminating wealth-based incarceration
- Ending sentencing enhancements based on location (drug-free school zones)
- Reducing exposure to reincarceration due to revocations from supervision
- Requiring racial impact statements before any new criminal law or regulation is passed and requiring legislation to proactively rectify any potential disparities that may result with new laws or rules
- Eliminating 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
- Encouraging judges to use their power to dismiss cases that originate with school officials or on school grounds, when the matter may be adequately addressed through school disciplinary or regulatory processes to avoid incarcerating children during their most formative years.
- Eliminating fines and fees, which effectively criminalize poverty.

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 greatly increase the length of sentences.

Police: They are generally an individual's first point of contact with the criminal justice system. The practices that police employ in communities can shape the public's view of and trust in the criminal legal system. Police can decide whether or not to arrest people, and how much force to use during encounters with the public. Police departments can also participate in diversion programs, which enable officers to divert people into community-based intervention programs, rather than into the criminal justice system.

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. 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.

- 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 U.S. criminal system is two to six times that of the general population.⁶⁹ In particular, people with psychiatric disabilities are dramatically overrepresented in jails and prisons across the country.⁷⁰

- People showing signs of mental illness are twice as likely to be arrested as people without mental illness for the same behavior⁷¹
- People with mental illness are sentenced to prison terms that are, on average, 12 percent longer than other people in prison⁷²
- 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 classes⁷³

Furthermore, sentencing reforms appear to leave people in prison with psychiatric disabilities behind. In recent years in California, for example, the prison population has decreased by more than 25 percent following a court order, 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.⁷⁴

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.⁷⁵ 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.⁷⁶ 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
 - Establishing 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.)⁷⁷
- 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 offenses to behavioral health centers
- Requiring prosecutors to offer diversion for people with mental health and substance use 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

Forecaster Chart

There are many pathways to cutting the prison population in New Hampshire 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 New Hampshire, 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 prison population***	Cost savings****
Drug possession	<ul style="list-style-type: none"> Reduce average time served by 60% (from 1.43 to 0.57 years) Institute alternatives that end all admissions (173 fewer people admitted) 	9.34% reduction (245 fewer people)	White: 0.9% increase Black: 0.7% increase Hispanic/Latino: 10.6% decrease Native American: 3.2% decrease Asian: 20.9% decrease	\$5,816,535
Public order offenses*****	<ul style="list-style-type: none"> Reduce average time served by 60% (from 1.48 to 0.59 years) Institute alternatives that reduce admissions by 40% (75 fewer people admitted) 	7.97% reduction (209 fewer people)	White: 0.7% decrease Black: 3.2% increase Hispanic/Latino: 4.5% increase Native American: 8.7% increase Asian: 8.7% increase	\$4,823,908

Assault	<ul style="list-style-type: none"> Reduce average time served by 50% (from 1.74 to 0.87 years) Institute alternatives that reduce admissions by 30% (55 fewer people admitted) 	7.78% reduction (204 fewer people)	White: 0.9% increase Black: 8.1% decrease Hispanic/Latino: 2.6% decrease Native American: 0.7% increase Asian: 9.4% decrease	\$4,388,199
Theft	<ul style="list-style-type: none"> Reduce average time served by 60% (from 1.45 to 0.58 years) Institute alternatives that reduce admissions by 30% (45 fewer people admitted) 	5.93% reduction (156 fewer people)	White: 0.5% decrease Black: 3.8% increase Hispanic/Latino: 1.7% increase Native American: 6.3% increase Asian: 6.3% increase	\$3,478,556
Burglary	<ul style="list-style-type: none"> Reduce average time served by 50% (from 1.29 to 0.65 years) Institute alternatives that reduce admissions by 30% (46 fewer people admitted) 	4.96% reduction (130 fewer people)	White: 0.4% decrease Black: 3.3% increase Hispanic/Latino: 1.3% increase Native American: 5.2% increase Asian: 5.2% increase	\$2,939,473
Drug distribution	<ul style="list-style-type: none"> Reduce average time served by 60% (from 1.06 to 0.43 years) Institute alternatives that reduce admissions by 30% (45 fewer people admitted) 	4.38% reduction (115 fewer people)	White: 1.2% increase Black: 2.7% decrease Hispanic/Latino: 12.1% decrease Native American: 10.8% decrease Asian: 4.3% decrease	\$2,606,730
Robbery	<ul style="list-style-type: none"> Reduce average time served by 50% (from 1.36 to 0.68 years) Institute alternatives that reduce admissions by 20% (27 fewer people admitted) 	4.12% reduction (108 fewer people)	White: 0.3% increase Black: 4.2% decrease Hispanic/Latino: 0.3% increase Native American: 2.2% decrease Asian: 4.3% increase	\$2,361,731
Other property offenses*****	<ul style="list-style-type: none"> Reduce average time served by 60% (from 1.11 to 0.44 years) Institute alternatives that reduce admissions by 30% (32 fewer people admitted) 	3.21% reduction (84 fewer people)	White: 0.2% decrease Black: 0.1% decrease Hispanic/Latino: 1.8% increase Native American: 3.3% increase Asian: 3.3% increase	\$1,863,658
Fraud	<ul style="list-style-type: none"> Reduce average time served by 60% (from 1.25 to 0.50 years) Institute alternatives that reduce admissions by 30% (24 fewer people admitted) 	2.75% reduction (72 fewer people)	White: 0.2% decrease Black: 0.7% increase Hispanic/Latino: 1.9% increase Native American: 4.5% decrease Asian: 5.6% decrease	\$1,658,905

*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 New Hampshire, where Black people made up 7 percent of the 2016 prison population but only constituted 1 percent of the state’s total adult population that year.

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

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

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

Total Fiscal Impact

If New Hampshire were to implement reforms leading to the changes above, 1,323 fewer people would be in prison in the state by 2025, a 50.45 percent decrease. This would lead to a total cost savings of \$91,691,030 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 New Hampshire’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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- 2 BJS, Correctional Statistical Analysis Tool.
- 3 Offense breakdowns in this Blueprint are based on the most serious or “controlling” offense for which a person in prison is serving time. Some people in prison are serving time for multiple convictions, and are categorized here only under the controlling offense types.
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