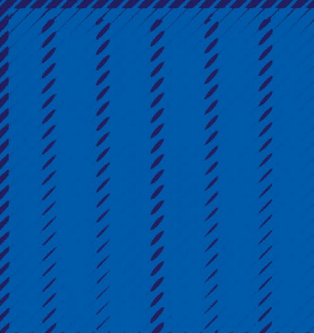


Blueprint for Smart Justice
New York



Blueprint *for* Smart Justice New York

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Executive Summary

Over the past five decades, the United States has dramatically increased its reliance on incarceration as a way to respond to drug addiction, mental illness, poverty, and inadequate education. As a result, the United States today incarcerates more people, both in 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, damaged families and communities, and wasted trillions of taxpayer dollars.

We all want to live in safe and healthy communities, and our criminal legal 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 significantly reduce its reliance on incarceration, and invest instead in alternatives 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 legal system and building a new vision of safety and justice. The Campaign is dedicated to cutting the nation's incarcerated population in half and combating racial disparities in the criminal legal 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 and 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 incarcerated population by itself does little to diminish racial disparities in incarceration — and in some cases would worsen them. In New York — where the adult Black imprisonment rate in 2017 was nearly seven times higher than the adult white imprisonment rate¹ — simply 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 combating these disparities.

As of January 1, 2018, 49,473 people were serving prison sentences in New York,² down from a peak of 72,899 in the wake of a series of state reforms and shifts in justice practices at the local level in New York City.³ While publicly available statewide data on jail populations is limited, in 2018, there were an estimated 22,860 additional people incarcerated in local jails, only 20 percent of whom were serving a jail sentence. The vast majority were either detained pretrial, being held for a state or federal agency, awaiting a sentencing hearing, or detained on a parole warrant.⁴

In 2015 drug offenses⁵ were the most common offense type for which people were sentenced to prison in New York, accounting for 23 percent of total prison admissions.⁶ While still high, this represents progress — in 2000, nearly half of all prison admissions (46 percent) were for drug offenses, prompting advocates

and community leaders in New York to successfully push for legislation reforming the state’s controversial Rockefeller Drug Laws. Other common offenses that contributed to prison admissions in 2015 included burglary (15 percent), robbery (14 percent), weapons offenses (9 percent), and assault (8 percent).

While the number of people entering and exiting New York prisons has dropped in recent years, more troubling trends lie beneath the surface. Between 2005 and 2015, the average length of time people in New York prisons had served so far increased by 14 percent.⁷ One explanation is the set of harsh habitual offender laws that lengthen sentences for people convicted of a second or third felony. New York also limits the amount of time someone can earn off their sentence for participating in programs and treatment. People serving a “determinate sentence” must complete at least 86 percent of their sentence before becoming eligible for conditional release, after which they must complete a period of supervision in the community.⁸ As of January 1, 2017, 59 percent of all people under custody were serving a determinate sentence, including 98 percent of people serving time for drug offenses and 70 percent of those sentenced for violent felony offenses.⁹

Black New Yorkers are severely impacted by mass incarceration in the state. Despite only accounting for 14 percent of the total adult population in New York, Black people accounted for 48 percent of the population under the custody of the New York State Department of Corrections and Community Supervision (DOCCS).¹⁰ And the majority of people imprisoned in New York were parents — at least 60 percent of men and 72 percent of women incarcerated by DOCCS had at least one child.¹¹

New York spent \$2.6 billion of its general fund on corrections in 2017, accounting for nearly 4 percent of the state’s general fund spending that year.¹² These funds would be better spent on other ways to improve outcomes in the long run, for example, on alternatives to segregation, drug treatment programs, and other initiatives for juveniles. Reducing the state’s prison population could save taxpayers hundreds of millions of dollars.

So, what’s the solution?

Decriminalizing activities that are in large part mere responses to precarity and lack of access to quality education, housing, and jobs — like sex solicitation or when a homeless person breaks into a vacant building to seek shelter — would keep people from being imprisoned when there is no compelling justification for doing so. In addition, diverting people from the criminal legal system through better treatment and support services prior to arrest could keep them from being funneled into the state’s prisons and jails. And better treatment for mental health and substance use disorders would help New Yorkers get the care they need rather than relying on incarceration as a solution to their challenges.

Reducing sentencing ranges, improving parole and release policies, and expanding access to compassionate release from prison would also help bring the state’s swollen prison population down. For a detailed list of ways New York can reduce the number of people in its prisons and jails, please see the below sections entitled “Reducing Admissions” and “Reducing Time Served.”

Ultimately, the answer is up to New York’s voters, communities, policymakers, and criminal legal advocates as they move forward with the urgent work of ending New York’s obsession with incarceration.

The Current Prison and Jail Population

As of January 1, 2017, one in eight people (13 percent) in prison were serving time for a drug offense, including 6 percent for drug possession. Over half (55 percent) of all people in DOCCS custody at that time had entered with a “first felony” sentencing status.¹³

The proportion of people in prison for violent offenses in New York has increased over time, while it has decreased for people with drug offenses. People with drug offenses made up 34 percent of the prison population in 1995, 23 percent in 2005, and just 13 percent in 2015.¹⁴ But while the overall proportion of

AT A GLANCE

NEW YORK JAIL AND PRISON POPULATION

In January 2017, **55 percent** of people in DOCCS custody had entered on a “first felony” sentencing status.

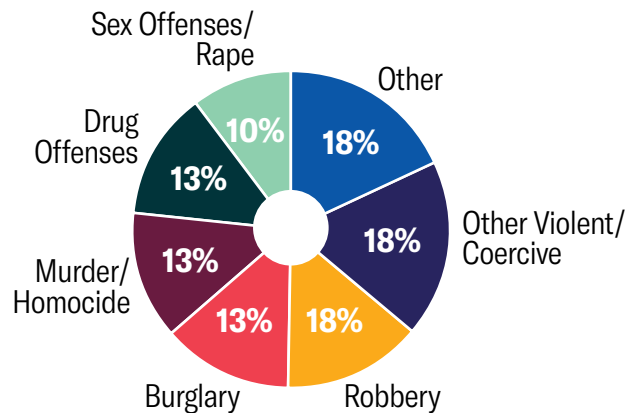
47 percent of people serving a prison sentence in New York for a drug offense in 2015 were sentenced for drug possession.

An estimated **22,860** people were incarcerated in local jails in New York in 2018.

people serving time for offenses related to drugs is shrinking, drug possession is becoming an increasing share of all drug offenses. In 1995, one in four (25 percent) people in New York prisons for drug offenses were serving time for drug possession. In 2015, 47 percent of people in prison for drug offenses were there for drug possession.¹⁵

A lack of access to treatment options and reentry support for people who have served time in New York prisons means many are rearrested after their release and returned to prison. Of the people released from DOCCS custody in 2012, 43 percent returned to custody within three years. Of that group, 78 percent returned on a technical violation of parole, such as missing an appointment or failing a drug test, rather than because they’d committed a new crime.¹⁶

TOTAL NEW YORK STATE PRISON POPULATION IN 2017¹⁷



In addition to the prison population, a large number of people are incarcerated in local jails in New York, although publicly available statewide data on people in jails is limited. In 2018, there were an estimated 22,860 people in local jails in New York,¹⁸ only 20 percent of whom were serving a jail sentence. The majority of people held in New York jails in 2018 were either detained pretrial, had not yet had a sentencing hearing, were detained on a parole warrant, or were being held for a state or federal agency.¹⁹ In New York City jails, only 13 percent of the detained population in 2018 was serving a jail sentence, compared to 24 percent in non-NYC jails.²⁰ New York City policymakers and advocates have made efforts to reduce the jail population in recent years. In 2017, New York City Mayor Bill de Blasio announced a 10-year plan to close the Rikers Island jail, a notorious multifacility complex known for poor conditions, abuse, and corruption.²¹

The State of the New York Prison System

New York's prison population skyrocketed between 1979 and 1999, increasing by 250 percent to a peak of 72,899 people.²² In the two decades that have followed, the state has implemented a number of reforms aimed at addressing this rise, including adjusting sentences for drug offenses, instituting a Drug Treatment Alternative-to-Prison (DTAP) program, and, more recently, raising the age of criminal responsibility. The state's reform efforts, coupled with significant shifts in justice practices at the local level in New York City,²³ contributed to a 30 percent decline in the prison population between 1999 and 2016.²⁴ As of January 1, 2018, there were 49,473²⁵ people serving prison sentences in New York.

AT A GLANCE

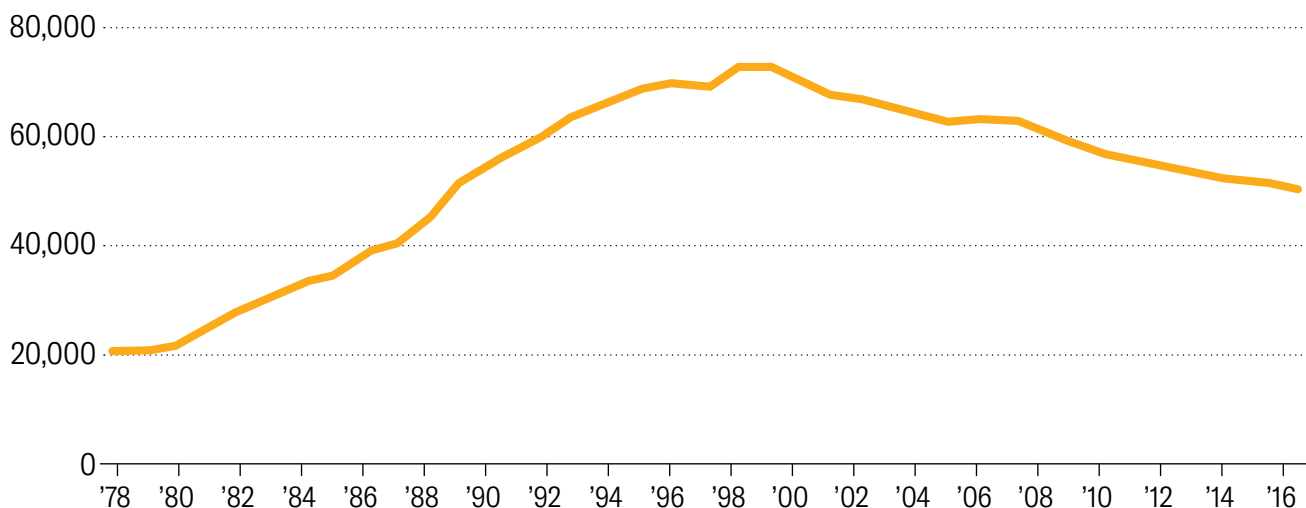
NEW YORK PRISONS

New York's prison population increased by **250 percent** between 1979 and 1999.

Between 1999 and 2016, the state's prison population declined by **30 percent**.

There were **49,473** people serving a prison sentence in New York as of January 1, 2018.

NEW YORK PRISON POPULATION



What Is Driving People Into Prison?²⁶

The number of annual admissions to New York prisons dropped by 28 percent between 2008 and 2018, when there were 19,395 admissions to prison in the state.²⁷ In 2015, drug offenses were the most common offense category for people admitted to prison in New York, accounting for one in four people (23 percent) sentenced to prison that year. Other common offenses that led to admissions to New York prisons in 2015 included burglary (15 percent), robbery (14 percent), weapons offenses (9 percent), and assault (8 percent).²⁸

While sentences for drug offenses are still a primary driver of admissions to New York prisons, the state has made progress in the last decade to decrease these admissions. In 2000, nearly half of admissions (46 percent) were for drug offenses. By 2015, drug offenses made up less than a quarter (23 percent) of admissions.²⁹ In 2009, New York passed legislation that reformed the controversial 1973 Rockefeller Drug Laws, which had previously imposed harsh prison terms for possession or sale of drugs. These reforms eliminated mandatory prison sentences for some drug offenses and reduced minimum sentences for others. They also expanded judges' ability to send people convicted of drug offenses to rehabilitation programs rather than prison.³⁰

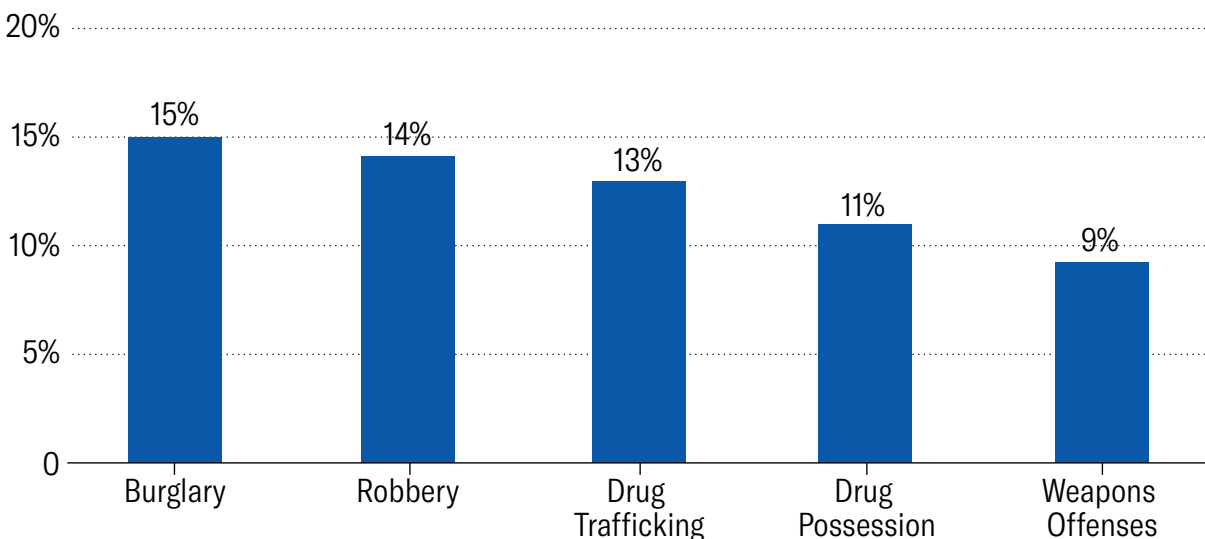
In 2018, 5,844 admissions to prison — 30 percent of all admissions that year³¹ — were for technical violations to supervision, which are not by themselves considered criminal behavior.³² This includes violations of the terms of parole and probation. While still high, this number has decreased over the past decade. In 2008, for example, there were 9,243 admissions to prison for such violations, constituting 34 percent of all admissions.³³

Why Do People Stay in Prison for So Long?

The number of people entering and exiting New York prisons has dropped in recent years, while the average length of time people spend in prison has increased. Between 2006 and 2016, annual admissions to New York prisons decreased by 20 percent and the annual number of releases from prison decreased by 14 percent.³⁴ As fewer people cycle in and out of prison, the average length of time served by people in New York prisons increased, rising by 14 percent between 2005 and 2015.³⁵

New York has a number of habitual offender laws that contribute to the long stretches of time people spend in prison. These laws lengthen sentences for people convicted of a second and third (or persistent) felonies

2015 NEW YORK PRISON ADMISSIONS BY TOP OFFENSE TYPE



and vary in severity between nonviolent and violent felonies. For example, the persistent violent felony offender law requires that a person convicted of a third violent felony receive an indeterminate sentence with a minimum term of 12 years or more and a maximum term of life imprisonment.³⁶ Overall, 4 percent of the total prison population on January 1, 2018, were sentenced as persistent felony offenders and 41 percent were sentenced as second felony offenders.³⁷

New York also limits the amount of time a person can earn off their sentence for participating in programs and treatment. Determinate sentencing, which allows the court to set a fixed sentence without a maximum or minimum term, was first authorized by the New York Legislature in 1995 for people sentenced for repeat felonies that were violent offenses. It has since been expanded to include all people convicted of violent offenses, drug offenses, and some sex offenses. People serving determinate sentences must serve at least 86 percent of their sentence before becoming eligible for conditional release, after which they must complete a period of supervision in the community.³⁸ The number of people serving determinate sentences in New York nearly tripled between 2001 and 2017. As of January 1, 2017, 59 percent of all people under DOCCS custody were serving a determinate sentence. This group includes 98 percent of people sentenced for drug offenses, along with 70 percent of people sentenced for violent felony offenses.³⁹

Because fewer people are serving indeterminate sentences, fewer people are becoming eligible for parole and more are completing their required terms without any “good time” credit.⁴⁰ In 2016, there were 50 percent fewer Board of Parole releases than in 2007 and 98 percent fewer presumptive releases.⁴¹ In 2018, 8,575 of the 22,233 releases (39 percent) from state prisons were releases to parole.⁴²

Life sentences contribute to the New York prison population through a “stacking effect,” meaning that although a relatively small number of people are admitted to prison with a life sentence each year (538 people in 2015⁴³), they stay in prison for a very long time and therefore make up a significant portion of the prison population. Although the number of annual admissions to New York prisons for life sentences

AT A GLANCE

LENGTH OF IMPRISONMENT AT A GLANCE

98 percent of people sentenced to prison for a drug offense in New York were serving a determinate sentence, as of January 2017.

In 2016 there were **50 percent** fewer Board of Parole releases than in 2007.

decreased by 59 percent between 2000 and 2015, the proportion of people in prison serving life sentences has remained relatively constant over that period of time.⁴⁴ As of January 1, 2018, nearly one in five people (18 percent) in DOCCS custody in New York had a sentence with a life maximum, including 291 people serving life without parole sentences.⁴⁵

Who Is Imprisoned?

Black New Yorkers: Incarceration in New York has a disproportionate impact on communities of color. The number of Black people imprisoned in New York per 100,000 adult residents in 2017 was nearly seven times higher than the equivalent rate for white people.⁴⁶ Despite accounting for only 14 percent of the total adult population in New York, Black people accounted for 48 percent of the population under the custody of DOCCS. As of 2017, one in 43 Black men in New York was imprisoned.⁴⁷

Latino New Yorkers: As of January 1, 2017, the number of Latinos imprisoned in New York per 100,000 adult Latino residents was more than three times as high as the equivalent rate for white New Yorkers. Latino people accounted for 24 percent of the population under custody of DOCCS but only accounted for 18 percent of the total adult population in New York.⁴⁸

Women in New York: As of January 1, 2017, women made up 4 percent of the prison population in New

York. While the overall prison population has dropped, the number of women in prison has held relatively constant in recent years. However, the number of women in the “incarcerated parolee” population nearly doubled from 44 to 84 between 2011⁴⁹ and 2017, when women made up one in 10 people (11 percent) with that status.⁵⁰ Over that same period, the number of men who were “incarcerated parolees” increased by 23 percent. “Incarcerated parolees” are people under community supervision who are participating in a parole program at a DOCCS facility.⁵¹ As of January 1, 2017, 47 percent of the women under DOCCS custody were there for non-violent/non-coercive offenses; 17 percent were incarcerated for a drug offense.⁵²

Older New Yorkers: Despite posing a negligible risk to public safety,⁵³ the number of people in New York prisons⁵⁴ 50 years old and older increased by 49 percent between 2007 and 2017 and now accounts for one in five people (20 percent) in New York prisons.⁵⁵

Parents in New York: The majority of people imprisoned in New York have at least one child. In 2017, at least 60 percent of men and 72 percent of women incarcerated by DOCCS were parents.⁵⁶ Children of incarcerated parents may encounter increased emotional, physical, educational, and financial challenges due to a parent’s incarceration.⁵⁷

AT A GLANCE

DEMOGRAPHICS

The adult Black imprisonment rate in 2017 was nearly **seven times higher** than the adult white imprisonment rate.

The adult Latino imprisonment rate in 2017 was more than **three times as high** as the adult white imprisonment rate.

At least 72 percent of women **and 60 percent** of men incarcerated by DOCCS in New York in 2017 were parents.

AT A GLANCE

MENTAL HEALTH DISORDERS

20 percent of men in prison in New York State in 2017 who had been assessed were classified as having a mental health need.

55 percent of women in prison in New York State in 2017 who had been assessed were classified as having a mental health need.

People with Mental Health Disorders

Mental health treatment needs are prevalent among people in New York prisons. DOCCS reports that in 2017, 20 percent of men and 55 percent of women in prisons who had been assessed were classified as having a mental health need. The prevalence of mental health needs among people who have not been assessed is unknown, and so are the needs among people with co-occurring disorders. The reported number of people imprisoned with diagnosed mental health needs has been growing in recent years, increasing by 41 percent for women and 27 percent for men between 2013 and 2017.⁵⁸ This does not account for those with mental health needs that are undiagnosed.

Budget Strains

The New York general fund spending on corrections increased by 174 percent between 1985 and its peak in 1995. It has since declined by 32 percent between 1995 and 2017. Still, New York general fund spending on corrections in 2017 was nearly twice as much as it was in 1985, outpacing growth in other areas, including education. New York spent \$2.6 billion of its general fund on corrections in 2017, accounting for nearly 4 percent of the state general fund.⁵⁹

While a huge proportion of these funds are being spent on housing the imprisoned, it is important to note that some correctional spending can improve outcomes in the long run. Since DOCCS agreed to a settlement in *Peoples v. Fischer* (a lawsuit brought

by the NYCLU about solitary confinement in DOCCS prisons), they have been required to spend more on alternatives to segregation, drug treatment programs, and special programs for juveniles that are designed to improve prison conditions and public safety outcomes. Lowering the prison population can free up resources for these programs as well as other criminal legal reforms that aim to help mitigate the negative impact of incarceration, such as alternatives to incarceration and therapeutic or vocational programming.

AT A GLANCE

BUDGET

General fund spending on corrections in New York increased by **174 percent** between 1985 and 1995.⁶⁰

In 2017, New York spent **\$2.6 billion** of its general fund on corrections.⁶¹

Ending Mass Incarceration in New York: A Path Forward

Mass incarceration is a failure to ensure equal justice under the law and to value the human dignity of all people. To end it, we must (1) acknowledge and undo the active choice we've made as a society through penal laws and court procedures to criminalize poverty and race; and (2) develop policies that address the inadequacies of our education, health care, and economic systems.

In short, there are many policy changes that can help New York end its mass incarceration crisis and hold stakeholders accountable, but the ultimate goal must be to dismantle the systems that drive mass criminalization. By challenging these systems, we should be able to further reduce the amount of people entering the criminal legal system in the first place and reduce the amount of time people serve within that system.

Reducing Admissions

To end mass incarceration, New York must break its reliance on jails and prisons as a default means to address society's fears about public safety. Evidence indicates that increased levels of incarceration do not produce lower rates of crime. In fact, sending people to jail and prisons can reduce public safety. Incarceration can perpetuate cycles of harm and violence, while pulling resources away from rehabilitation programs and other vital community needs that actually make people feel safe.⁶² Here are some strategies:

- **Support decriminalization:** The Legislature needs to move away from a culture of criminalization, stop expanding the criminal code, and look at alternatives to incarceration,

especially for activities that are in large part responses to being denied access to quality education, housing, and jobs. We must reevaluate what we consider crimes and reorient how we address, for example, sex solicitation, a child running away from a foster care home, or a homeless person breaking into a vacant building to seek shelter.

- **Early diversion:** Early diversion from the criminal legal system is necessary to connect people to the support and services that would serve them better than jail or prison. For example, models that divert people to treatment and support services before arrest – or, alternatively, programs that divert people before they are charged – have proven successful across the country.⁶³ The Legislature should adequately fund these early diversion programs, and local police and prosecutors should develop policies that mandate diversion for those who would benefit.
- **Alternatives to incarceration:** The good news is that alternatives exist. Several types of alternative-to-incarceration programs have shown great success in reducing all types of criminal activity, no matter the seriousness of the crime. Programs offering support services such as substance use treatment, mental health care, employment, housing, health care, and vocational training have significantly reduced recidivism rates for participants.⁶⁴ New York has a long history of investing in community-based alternatives to jail and prison, including the founding of the country's first pretrial release program in 1961.⁶⁵ Since then, an

array of government agencies, in concert with non-profit organizations such as the Center for Employment Opportunities, Center for Alternative Sentencing and Employment Services, Vera Institute of Justice, Criminal Justice Agency, Center for Community Alternatives, Osborne Association, Women’s Prison Association, Fortune Society, Center for Court Innovation, and others, have worked to expand the availability of both pretrial and post-adjudication alternatives to incarceration. Today, the New York State Division of Probation and Correctional Alternatives funds approximately 165 alternative-to-incarceration programs.

Court-based programs including drug, veterans’, and mental health courts can be effective in certain circumstances, but out-of-court or community programs can be most beneficial.⁶⁶ 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 implemented early, these processes have not only demonstrated reduced recidivism for defendants,⁶⁷ they have also led to decreased symptoms of post-traumatic stress in victims of crime.⁶⁸ Courts, prosecutors, and judges that embrace these solutions can fulfill their responsibilities to public safety and to victims – and can often generate far better results than imprisonment can deliver, so long as it is voluntary and takes place without delay. Lawmakers can explore such interventions at multiple phases in the system, whether through decriminalization or as alternatives to arrest, charges, or incarceration.

- **Expanded treatment – 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. Diversion programs have been shown to be effective for people charged with both nonviolent and violent

offenses.⁶⁹ When implemented effectively, diversion reduces arrests and encourages voluntary treatment in the community.⁷⁰

Effective diversion programs coordinate with community services that provide a wide range of substantial, quality wraparound treatments and supports for people with disabilities so they can better access housing, employment, and individualized community-based supports. After an initial investment in community supports, diversion programs have the potential of saving jurisdictions money.⁷¹ It is, however, crucial that these program offerings do not hinge on cost savings and do not become back-door entry points into jails and prisons for people who participate in them. Treating the mental health needs of individuals is critical to addressing the mass incarceration crisis. Ways to support treatment options include the following:

- Reinvest in local community health services
 - Ensure New Yorkers have greater access to mental health treatment and substance use treatment by requiring DOCCS to provide assistance in resuming Medicaid coverage 30 days prior to a person being released from jail or prison, while on probation/parole, and after their separation from the criminal legal system to reduce risks of returning
 - Bring crisis intervention teams to more localities
 - Give more enforcement authority and funding to the state’s prison and jail watchdog agency, the New York State Commission of Correction, to promulgate stronger standards for the care of individuals in jails and prisons
- **Expanded treatment – 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. Addressing

substance use through treatment rather than incarceration can more effectively reduce crime.⁷² There are, however, insufficient community-based substance treatment services. Ideal treatment services for substance use disorders are not limited to substance use.⁷³ There are a range of needs that co-occur with substance use disorders, and programs must account for them.

- **Eliminate cash bail:** New York can further reduce its rate of pretrial detention by eliminating its use of cash bail. In 2019, the New York State Legislature eliminated cash bail for most low-level offenses, including violations, most misdemeanors, nonviolent felonies, and two violent felony charges.⁷⁴ It kept cash bail for people charged with sex misdemeanors and most violent felonies. Far too often, people who cannot afford their bail will end up in jail for weeks, months, or, in some cases, years as they wait for their day in court, even though they are legally innocent. When this happens, the criminal legal system leaves them with a difficult choice: take a plea deal or fight the case from behind bars. While detained pretrial, research shows many people face significant collateral damage, such as job loss or interrupted education.⁷⁵ After even a short stay in jail, taking a plea deal sounds less burdensome than losing everything, which is likely why evidence shows that pretrial detention significantly increases a defendant’s risk of conviction.⁷⁶ The current cash bail system harms people of color in particular. Research shows that people of color are detained at higher rates across the country when unable to meet bail, and that courts set significantly higher bail amounts for them.⁷⁷ In order to significantly reduce pretrial detention and combat racial disparities, the New York Legislature should eliminate cash bail and limit pretrial detention to the rare case where a person poses a serious, clear threat to another person.
- **Prosecutorial reform:** Prosecutors are the most powerful actors in the criminal legal system. They have the ability to wield the power of the state against an individual

“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.”⁹⁰

— From *The New Jim Crow*, Michelle Alexander

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. Prosecutors’ decisions powerfully influence the amount of time a person faces and eventually serves. There should be some mechanism for the state and counties to review and assess those decisions overall to ensure that they are made appropriately. Moreover, sometimes prosecutors wrongfully convict a person, whether through prosecutorial misconduct or the conviction of an innocent person. Legislation that supports statewide Conviction Integrity Units in each county prosecutor’s office can address wrongful convictions and prosecutorial misconduct. Conviction Integrity Units add oversight to a prosecutor’s decisions, encouraging prosecutors to use greater scrutiny when reviewing and charging cases.

- **Expanding judicial discretion:** The Legislature can also limit the circumstances in which a judge is required to impose a prison sentence instead of community supervision, especially for drug offenses and in situations when the mandatory prison sentence is triggered by a prior felony. Judges must also

have a variety of options at their disposal besides imprisonment, allowing them to require treatment, mental health care, restorative justice, or other evidence-based alternatives to incarceration. These programs should be available to the court in all or most cases, regardless of the severity of the offense or a person's prior criminal history. The court, not the Legislature, should be in a position to decide whether such an option is appropriate in individual cases.

- **Reducing probation and parole revocations:** Too often, people revoked from supervision are sent to prison for technical violations, such as missing curfew or lack of employment. Moreover, people on probation and parole who live in communities that are overly policed too frequently are arrested and cycle back into the system due to police practices. The Legislature should implement a system of graduated sanctions for probation and parole violations, ensuring responses to violations are proportional. Incarceration should be prohibited in cases of technical violations. The state should ensure appointed counsel at revocation hearings.

Reducing Time Served

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

- **Sentencing reform — general:** In 2009, New York eliminated mandatory minimum penalties in low-level drug cases and reduced mandatory minimums in other drug cases.⁷⁸ The Legislature can amend New York's criminal code further to reduce sentencing ranges, including and especially for other drug offenses, burglary and other property offenses, robbery, public order offenses, and assault.
- **Sentencing reform — enhancements:** The Legislature can also limit the circumstances and severity of New York's prior felony sentencing in

which the presence of even a single prior felony can both substantially increase the sentencing range and delay initial parole eligibility. Multiple prior felonies trigger even more substantial enhancements to both sentencing range and initial parole eligibility.

- **Parole release reform:** Improving parole and release policies and practices to ensure that eligible people are paroled more quickly and fairly is another key way to reduce the amount of time people spend in prison.
- **Earned time/earned credit reform:** The Legislature should expand the availability of earned credits against a prison sentence through participation in educational, vocational, and other opportunities. Such programs are essential to incentivizing social behavior, preparing individuals for successful reentry and reducing length of stay for those prepared to reintegrate. Over time, earned time and credit opportunities reduce recidivism rates and correctional costs.⁷⁹
- **Compassionate release:** The Legislature should expand access to compassionate release from prison. Keeping aging and seriously injured or ill people incarcerated significantly taxes prison resources. Studies have shown that incarcerating an older (age 50 and above) person costs double what it costs to incarcerate a younger person.⁸⁰ What is more, keeping older people behind bars does not serve the goal of public safety, particularly as studies have clearly shown that as people age, their propensity to commit crime significantly declines.⁸¹ There is also clear evidence showing that older persons have much lower rates of recidivism than their younger counterparts.⁸²

Reducing Racial Disparities

Reducing the number of people who are incarcerated in New York will not on its own guarantee a reduction in racial disparities in jails and prisons.

People of color (especially Black and Latinx people) are at higher risk of becoming involved in the criminal legal 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. The disparities grow at each stage where there is a discretionary point in the system, beginning with initial law enforcement contact and increasing at subsequent stages, such as pretrial detention, conviction, sentencing, and post-release opportunity.⁸³ Focusing on one of the factors that drives racial disparities does not address issues across the whole system.

Racial disparities are so entrenched in the system that they cannot be mitigated by solely reducing the scale of mass incarceration. Shrinking the jail and prison population across the board will likely result in lowering incarceration rates for all racial and ethnic populations, but it will not address comparative disproportionality across populations. For example, focusing on reductions to prison admissions and sentences 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.

Stops made by the New York Police Department (NYPD) plummeted, for example, after national outrage about the dramatic rise of the use of stop-and-frisk, litigation by the NYCLU and other organizations, and community organizing. In 2018, New York City recorded the lowest number of homicides in nearly 70 years. Despite the drastic decline in reported stops since 2011, our analysis in *Stop-and-Frisk in the de Blasio Era* finds that when it comes to who the NYPD stops, frisks, and uses force on, racial disparities remain stark.⁸⁴

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

Some examples include:

- Ending over-policing in communities of color, including technological tools of surveillance, such as facial recognition tools
- 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 from new laws or rules
- Eliminating discriminatory gang sentencing enhancements that disproportionately target people of color
- Addressing racial bias in risk assessment instruments used to assist decision-making in the criminal legal 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 process to avoid incarcerating children during their most formative years
- Eliminating fines and fees, which effectively criminalize poverty, and the perverse incentive for counties and municipalities to levy fines and fees to fund their operating budgets
- Shifting funding structures from prioritizing law enforcement and corrections to community

organizations, job creation, schools, drug and mental health treatment, and other social service providers

Reducing Disability Disparities

Mental health treatment needs are prevalent among people in New York jails and prisons. Jail too often operates as a treatment facility of last resort for these individuals. In 2014, a report by the Mayor’s Task Force for Behavioral Health and the Criminal System found that nearly 40 percent of people detained at Rikers Island had mental health treatment needs.⁸⁵ In 2011, the Council of State Governments found that New York City courts and corrections jailed people with mental health needs for roughly twice as long as those without, and that this group tends to return to jail twice as fast as individuals without mental health needs.⁸⁶

Further, DOCCS reports that in 2017, 20 percent of men and 55 percent of women in prisons who had been assessed were classified as having a mental health need. The reported number of people imprisoned with diagnosed mental health needs has been growing in recent years, increasing by 41 percent for women and 27 percent for men between 2013 and 2017.⁸⁷ Moreover, DOCCS estimates that 80 percent of the people in state prisons are in need of alcoholism or substance abuse treatment.⁸⁸

These statistics do not account for those with mental health needs that are undiagnosed, nor the number of people with co-occurring disorders.

The fact that people with mental health disabilities are arrested more frequently, stay incarcerated longer, and return to prison 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.⁸⁹ 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
- Building and improving the capacity and quality of community-based mental health and substance use disorder care and support
- Ensuring that policies and practices throughout the criminal legal system at every intercept reflect understanding of addiction, mental illness, treatment, and recovery, and support a health-first, rather than a punitive, approach
- Promoting policies and practices that help people successfully transition back into the community
- Ending broken windows policing and arrest and incarceration for 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
- Creating sustainable services and programs for prosecutors to recommend as diversion for people with mental health and substance use disabilities
- 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
- Evaluating prosecutors’ charging and plea-bargaining practices to identify and eliminate disability bias
- Requiring transparency from prosecutors’ offices about 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 that are used to assist decision-making in the criminal legal system

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 recommend whom to divert to treatment programs (for example, drug or mental health programs) rather than send to prison. And they can decide not to charge enhancements that greatly increase the length of sentences.

Police: They are generally the first point of contact with the criminal legal 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 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 legal 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 fund the creation of new alternatives, including diversion programs that provide supported housing, treatment, and vocational training. They can also decide to sufficiently fund mental health and substance use 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, it may recognize and release more people who have disciplinary issues in their records that are due to a lack of accommodation 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.

Forecaster Chart

There are many pathways to cutting the prison population in New York 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 York, 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 from prison population reduction****
Drug offenses	<ul style="list-style-type: none"> Reduce average time served for drug distribution by 60% (from 1.55 to 0.62 years) Institute alternatives that reduce admissions for drug distribution by 70% (1,349 fewer people admitted) Institute alternatives that end all admissions for drug possession (2,016 fewer people admitted) 	11.90% reduction (5,674 fewer people)	White: 3.4% increase Black: 0.6% decrease Hispanic/Latino: 2.6% decrease Native American: 1.7% increase Asian: 7.1% increase Other: 0.3% decrease	\$205,809,714
Burglary	<ul style="list-style-type: none"> Reduce average time served by 60% (from 2.11 to 0.85 years) Institute alternatives that reduce admissions by 50% (1,500 fewer people admitted) 	10.76% reduction (5,131 fewer people)	White: 5.6% decrease Black: 2.6% increase Hispanic/Latino: 0.6% increase Native American: 5.4% decrease Asian: 2.5% increase Other: No change	\$185,668,279
Robbery	<ul style="list-style-type: none"> Reduce average time served by 50% (from 2.49 to 1.24 years) Institute alternatives that reduce admissions by 40% (1,044 fewer people admitted) 	9.54% reduction (4,548 fewer people)	White: 4.5% increase Black: 2.4% decrease Hispanic/Latino: No change Native American: 3.5% increase Asian: 5.8% increase Other: No change	\$155,852,991

Impact Compared to 2025 Baseline*

Offense category**	Policy outcome	Prison population impact	Impact on racial and ethnic makeup of prison population***	Cost savings from prison population reduction****
Weapons offenses*****	<ul style="list-style-type: none"> Reduce average time served by 60% (from 2.27 to 0.91 years) 	5.61% reduction (2,677 fewer people)	White: 3.9% increase Black: 2.3% decrease Hispanic/Latino: 0.9% increase Native American: 0.5% decrease Asian: 2.7% increase Other: 1.1% decrease	\$84,309,661
Assault	<ul style="list-style-type: none"> Reduce average time served by 50% (from 2.24 to 1.12 years) Institute alternatives that reduce admissions by 40% (624 fewer people admitted) 	5.14% reduction (2,450 fewer people)	White: 1.3% increase Black: 0.3% decrease Hispanic/Latino: 0.5% decrease Native American: 2.4% decrease Asian: 2.4% decrease Other: 1.5% decrease	\$84,174,990
Public order offenses*****	<ul style="list-style-type: none"> Reduce average time served by 50% (from 1.75 to 0.87 years) Institute alternatives that reduce admissions by 60% (660 fewer people admitted) 	3.20% reduction (1,526 fewer people)	White: 1.7% decrease Black: 0.7% increase Hispanic/Latino: 0.5% increase Native American: No change Asian: 0.8% increase Other: 1.0% decrease	\$55,143,813
Theft	<ul style="list-style-type: none"> Reduce average time served by 60% (from 1.27 to 0.51 years) Institute alternatives that reduce admissions by 50% (484 fewer people admitted) 	2.06% reduction (981 fewer people)	White: 1.9% decrease Black: 0.7% increase Hispanic/Latino: 0.7% increase Native American: 0.3% increase Asian: 0.8% decrease Other: 0.1% decrease	\$37,610,045

Impact Compared to 2025 Baseline*

Offense category**	Policy outcome	Prison population impact	Impact on racial and ethnic makeup of prison population***	Cost savings from prison population reduction****
Fraud	<ul style="list-style-type: none"> Reduce average time served by 60% (from 1.33 to 0.53 years) Institute alternatives that reduce admissions by 50% (276 fewer people admitted) 	1.23% reduction (587 fewer people)	White: 0.8% decrease Black: 0.1% increase Hispanic/Latino: 0.6% increase Native American: 0.2% increase Asian: 0.1% increase Other: 0.2% decrease	\$22,418,575
DWI	<ul style="list-style-type: none"> Reduce average time served by 60% (from 1.41 to 0.56 years) Institute alternatives that reduce admissions by 70% (294 fewer people admitted) 	1.10% reduction (526 fewer people)	White: 2.1% decrease Black: 0.8% increase Hispanic/Latino: 0.6% increase Native American: 2.5% decrease Asian: 0.8% increase Other: 0.3% increase	\$21,465,892

*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 or ethnic group to the number of people in the state's general population of that same group. 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 York, where Black people made up 48 percent of the population incarcerated by DOCCS but constituted only 14 percent of the state's total adult population in 2017.

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

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

Total Fiscal Impact

If New York were to implement reforms leading to the changes above, 24,099 fewer people would be in prison in the state by 2025, a 50.53 percent decrease. This would lead to a total cost savings of \$2,587,943,953 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 York's prison population, racial and ethnic representation in the prison population, and state corrections spending. First, trends in admissions and exit rates for each offense category in recent years are analyzed and projected out to estimate a baseline state prison population projection through 2025, assuming recent trends will continue. Then, a mathematical model is used to estimate how various offense-specific reform scenarios (for example, a 10 percent reduction in admissions for drug possession or a 15 percent reduction in length of stay for robbery) would change the 2025 baseline projected prison population. The model allows for reform scenarios to include changes to the number of people admitted to prison and/or the average length of time served for specific offenses. The model then estimates the effect that these changes would have by 2025 on the number of people in prison, the racial and ethnic makeup of the prison population, and spending on prison. The analysis assumes that the changes outlined will occur incrementally and be fully realized by 2025.

All results are measured in terms of how outcomes under the reform scenario differ from the baseline projection for 2025. Prison population size impacts are measured as the difference between the 2025 prison population under the baseline scenario and the forecasted population in that year with the specified changes applied. Impacts on the racial and ethnic makeup of the 2025 prison population are measured by comparing the share of the prison population made up by a certain racial or ethnic group in the 2025 baseline population to that same statistic under the reform

scenario and calculating the percent change between these two proportions. Cost savings are calculated by estimating the funds that would be saved each year based on prison population reductions relative to the baseline estimate, assuming that annual savings grow as less infrastructure is needed to maintain a shrinking prison population. Savings relative to baseline spending are calculated in each year between the last year of available data and 2025, and then added up to generate a measure of cumulative dollars saved over that time period.

Endnotes

- 1 U.S. Census Bureau, "Annual Estimates of the Resident Population by Sex, Age, Race, and Hispanic Origin for the United States and States," 2017 population estimates; New York State Department of Corrections and Community Supervision (DOCCS), *Under Custody Report* (January 2017), <http://www.doccs.ny.gov/Research/Reports/2017/Under%20Custody%20Report%202017.pdf>. Note: The term "imprisoned" refers to people in correctional facilities under DOCCS custody and does not include people incarcerated in jails. The 2017 "under custody" population includes 749 "incarcerated parolees" in addition to 50,717 "inmates." "Incarcerated parolees" are people under community supervision who are participating in Alt 90 and Alt 45 programs within DOCCS facilities and are discussed in detail below.
- 2 New York State Department of Corrections and Community Supervision, *Under Custody Report* (January 2018), <http://www.doccs.ny.gov/Research/Reports/2018/Under%20Custody%20Report%202018.pdf>. Note: This figure of 49,473 includes people serving prison sentences in correctional facilities and parole program facilities. It does not include "incarcerated parolees" (798 people in 2018) serving community supervision sentences within DOCCS facilities. The state's total under custody population as of January 1, 2018, was 50,271.
- 3 New York State Department of Corrections and Community Supervision, *Community Supervision Legislative Report* (2017), http://www.doccs.ny.gov/Research/Reports/2017/Legislative_Report.pdf.
- 4 New York State Division of Criminal Justice Services, *Jail Population Report* (February 2019), https://www.criminaljustice.ny.gov/crimnet/ojsa/jail_pop_v.pdf.
- 5 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.
- 6 Bureau of Justice Statistics (BJS), National Corrections Reporting Program, 2015.
- 7 BJS, National Corrections Reporting Program, 2015.
- 8 New York State Permanent Commission on Sentencing, *A Proposal for "Fully Determinate" Sentencing for New York State* (December 2014), <http://www2.nycourts.gov/ip/sentencing/Determinate%20Sentencing%20Report%20Final%20Delivered.pdf>.
- 9 New York State Department of Corrections and Community Supervision, *Under Custody Report* (January 2017), <http://www.doccs.ny.gov/Research/Reports/2017/Under%20Custody%20Report%202017.pdf>.
- 10 U.S. Census Bureau, "Annual Estimates of the Resident Population by Sex, Age, Race, and Hispanic Origin for the United States and States," 2017 population estimates; New York State Department of Corrections and Community Supervision, *Under Custody Report* (January 2017), <http://www.doccs.ny.gov/Research/Reports/2017/Under%20Custody%20Report%202017.pdf>. Note: Under Custody population includes 749 "incarcerated parolees" in addition to 50,339 "inmates."
- 11 New York State Department of Corrections and Community Supervision, *Under Custody Report* (January 2017), <http://www.doccs.ny.gov/Research/Reports/2017/Under%20Custody%20Report%202017.pdf>. Note: The total used to calculate percentages includes a total of 1,452 people for whom data is unknown. "Incarcerated parolees" are included in percentages and totals.
- 12 National Association of State Budget Officers, *State Expenditure Report series*, <https://www.nasbo.org/reports-data/state-expenditure-report/state-expenditure-archives>.
- 13 New York State Department of Corrections and Community Supervision, *Under Custody Report* (January 2017), <http://www.doccs.ny.gov/Research/Reports/2017/Under%20Custody%20Report%202017.pdf>. Note: Second and Persistent felony offender status refers to the guidelines under which a person was sentenced, and there is some variation in sentencing history among people who enter prison under these provisions. For example, some people sentenced as "first felony offenders" had prior felony convictions but are not classified as "persistent felony offenders" because they were already sentenced to the most severe penalty under A-1 felony convictions and therefore cannot be sentenced under persistent felony offender guidelines.
- 14 BJS, National Corrections Reporting Program, 2015.
- 15 BJS, National Corrections Reporting Program, 2015.
- 16 New York State Department of Corrections and Community Supervision, *2012 Inmate Releases: Three Year Post-Release Follow-Up* (2012), http://www.doccs.ny.gov/Research/Reports/2017/2012_releases_3yr_out.pdf. Note: This recidivism data includes people released from both correctional facilities and parole program facilities.
- 17 New York State Department of Corrections and Community Supervision, *Admissions and Releases Calendar Year 2017* (2018), <http://www.doccs.ny.gov/Research/Reports/2019/Admission%20Releases%20Report%20Calendar%20Year%202017.pdf>. Note: The January 1, 2017, prison population included 856 "juvenile offenders" and "youthful offenders" that are not included in these totals because the data for these groups are not broken down by offense type. "Other Violent/Coercive" offense category includes Assault; Manslaughter; Attempted Murder Conspiracy 2, 3, and 4; Kidnapping 1st, and 2nd; Arson 1st, and 2nd; Other violent; and Other Coercive Offenses. The largest two offense categories included in the "Other" category are Weapons Offenses and Grand Larceny.
- 18 Note: This total includes some individuals who were being held for federal and state authorities.
- 19 New York State Division of Criminal Justice Services, *Jail Population Report* (February 2019), https://www.criminaljustice.ny.gov/crimnet/ojsa/jail_pop_v.pdf.
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- 22 BJS, Corrections Statistical Analysis Tool.
- 23 Judith A. Greene and Vincent Schiraldi, "Better by Half: The New York Story of Winning Large-Scale Decarceration while Increasing Public Safety," *Federal Sentencing Reporter* 29, no. 1 (October 2016), https://justicestrategies.org/sites/default/files/publications/BBHFINALGreeneSchiraldipub_1.pdf.

New York State Department of Corrections and Community Supervision, *Community Supervision Legislative Report* (2017), http://www.doccs.ny.gov/Research/Reports/2017/Legislative_Report.pdf.

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25 New York State Department of Corrections and Community Supervision, *Under Custody Report* (January 2018), <http://www.doccs.ny.gov/Research/Reports/2018/Under%20Custody%20Report%202018.pdf>. Note: This figure of 49,473 includes people serving prison sentences in correctional facilities and parole program facilities. It does not include "incarcerated parolees" (798 people in 2018) serving community supervision sentences in DOCCS facilities. The state's total under custody population as of January 1, 2018, was 50,271.

26 Prison admissions reflect the number of people entering New York prisons in a given year, while the total prison population refers to the total number of people serving prison sentences at a given time.

- 27 New York State Department of Corrections and Community Supervision, Admissions and Releases report series, 2008–2018.
- 28 BJS, National Corrections Reporting Program, 2015. Note: Admissions for technical violations to supervision are categorized in this data under the original controlling offense.
- 29 BJS, National Corrections Reporting Program, 2015.
- 30 New York State Division of Criminal Justice Services, *Felony Drug Court Activity Among Offenders Eligible Under 2009 Drug Law Changes 2008–2010* (November 2011), <http://www.criminaljustice.ny.gov/drug-law-reform/documents/drug-court-activity-report.pdf>.
- 31 Note: This figure does not include “incarcerated parolee admissions,” which DOCCS reports as a category that includes judicially sanctioned admissions, violation diversion, residential treatment, and other programs.
- 32 New York State Department of Corrections and Community Supervision, *Admissions and Releases Calendar Year 2018* (2019), <http://www.doccs.ny.gov/Research/Reports/2019/Admission%20Releases%20Report%20Calendar%20Year%202018.pdf>.
- 33 New York State Department of Corrections and Community Supervision, *Admissions and Releases Calendar Year 2008* (2009), http://www.doccs.ny.gov/Research/Reports/2009/Admissions_and_Releases_2008.pdf.
- 34 New York State Department of Corrections and Community Supervision, Admissions and Releases report series 2006–2016.
- 35 BJS, National Corrections Reporting Program, 2015.
- 36 New York Penal Law § 70.08.
- 37 New York State Department of Corrections and Community Supervision, *Under Custody Report* (January 2018), <http://www.doccs.ny.gov/Research/Reports/2018/Under%20Custody%20Report%202018.pdf>. Note: Some people sentenced as “first felony offenders” had prior felony convictions at the time they were sentenced, but are not classified as “persistent felony offenders” because they were already sentenced to the most severe penalty under A-1 felony convictions.
- 38 New York State Permanent Commission on Sentencing, *A Proposal for “Fully Determinate” Sentencing for New York State* (December 2014), <http://ww2.nycourts.gov/lp/sentencing/Determinate%20Sentencing%20Report%20Final%20Delivered.pdf>.
- 39 New York State Department of Corrections and Community Supervision, *Under Custody Report* (January 2017), <http://www.doccs.ny.gov/Research/Reports/2017/Under%20Custody%20Report%202017.pdf>.
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- 44 BJS, National Corrections Reporting Program, 2015.
- 45 New York State Department of Corrections and Community Supervision, *Under Custody Report* (January 2018), <http://www.doccs.ny.gov/Research/Reports/2018/Under%20Custody%20Report%202018.pdf>. Note: Includes “incarcerated parolee” population.
- 46 Note: Adult rates are calculated using the population of people 18 years old and older. However, New York does incarcerate some 16- and 17-year-old youth in adult prisons (68 in 2017), and these numbers are included in the rate numerators. As a result of 2017 legislation, 16-year-olds are processed as juveniles as of October 1, 2018, and 17-year-olds will be processed as juveniles on October 1, 2019; however, these reforms are not retroactive. New York State, *Raise the Age NY Bill Summary (June 2017)*, http://raisetheagency.com/wp-content/uploads/2017/06/rta_billsummary_final_June-2017.pdf.
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- 49 Note: 2011 is the first year that New York reported “incarcerated parolees.”
- 50 New York State Department of Corrections and Community Supervision, *Under Custody Report* (January 2017), <http://www.doccs.ny.gov/Research/Reports/2017/Under%20Custody%20Report%202017.pdf>.
- 51 New York State Department of Corrections and Community Supervision, *Under Custody Report* (January 2012), http://www.doccs.ny.gov/Research/Reports/2013/UnderCustody_Report_2012.pdf.
- 52 New York State Department of Corrections and Community Supervision, *Under Custody Report* (January 2017), <http://www.doccs.ny.gov/Research/Reports/2017/Under%20Custody%20Report%202017.pdf>. Note: These calculations exclude the “youthful/juvenile offender” population.
- 53 American Civil Liberties Union, *At America’s Expense: The Mass Incarceration of the Elderly* (June 2012), <https://www.aclu.org/report/americas-expense-mass-incarceration-elderly?redirect=criminal-law-reform/report-americas-expense-mass-incarceration-elderly>.
- 54 Note: This number does not include the “incarcerated parolee” population.
- 55 Human Rights Watch, *Old Behind Bars: The Aging Prison Population in the United States* (2012), https://www.hrw.org/sites/default/files/reports/usprisons0112webwcover_0.pdf; New York State Department of Corrections and Community Supervision, *Under Custody Report* series, 2007–2017.
- 56 New York State Department of Corrections and Community Supervision, *Under Custody Report* (January 2017), <http://www.doccs.ny.gov/Research/Reports/2017/Under%20Custody%20Report%202017.pdf>. Note: The total used to calculate percentages includes a total of 1,452 people for whom data is unknown. “Incarcerated parolees” are included in percentages and totals.
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