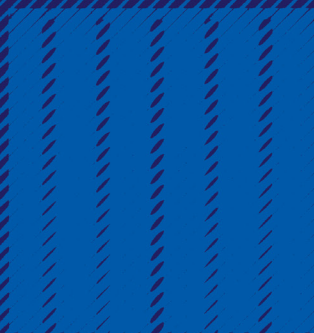


Blueprint *for* Smart Justice
Ohio



Blueprint *for* Smart Justice Ohio

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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. This mass incarceration crisis has transformed American society, damaged families and communities, and wasted trillions of taxpayer dollars.

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

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

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

reducing prison admissions and length of stay on state prison populations, state budgets, and the racial disparity of those imprisoned.

The analysis was eye-opening.

In every state, we found that reducing the prison population by itself does little to diminish racial disparities in incarceration — and in some cases would worsen them. In Ohio — where Black people were just 12 percent of the adult population but 44 percent of those imprisoned in 2016¹ — reducing the number of people imprisoned will not on its own reduce racial disparities within the prison system. This finding confirms for the Campaign that urgent work remains for advocates, policymakers, and communities in Ohio and across the nation to focus on efforts that are specific to combatting these disparities, like reducing incarceration before trial through bail reform, preventing the incarceration of people arrested on misdemeanor and low-level felony charges, and expanding parole opportunities.

In Ohio, the prison population nearly quadrupled between 1980 and 2016, giving the state the fifth-largest prison population in the country in 2016.² Despite declines nationally in the per capita state imprisonment rate, Ohio's rate has risen over the past decade³ with more than 50,000 people in Ohio prisons in 2017.⁴

Zealous prosecution and harsh sentences for drug convictions and property offenses⁵ fuel overimprisonment in Ohio. Additionally, violations of community supervision, probation, parole, and judicial release (a form of early release that is subject to judicial discretion) have contributed to the swell. Nearly 30 percent of all people released from Ohio prisons in 2012

were sent back to prison within three years,⁶ either for a new crime or for a technical violation of their community supervision – non-criminal actions (or inaction) by a person on community supervision, like failing to report to a scheduled office visit or not having an approved place to live.

Compounding matters, Ohio prisons often fail to provide access to treatment options and reentry support for people convicted of a crime, even though 92 percent of those admitted to Ohio prisons in 2014 had a history of drug abuse⁷ and 35 percent had a history of mental health problems.⁸ Though the use of heroin and opioids by people admitted to Ohio prisons has increased considerably over the past decade,⁹ the Ohio Department of Rehabilitation and Correction put less than 5 percent of its spending on people in prison towards mental health services and less than 3 percent towards education in 2016.¹⁰

So, what's the path forward?

Any meaningful effort to reach a 50 percent reduction in incarceration in Ohio will need to, at a minimum, address the state's opioid problems by treating substance use disorders and mental illness as the public health issues they are. Ohio must also reduce the number of people incarcerated pending a trial. There is a direct relationship between pretrial detention and conviction rates, and in nearly all cases of pretrial detention in Ohio, people are incarcerated simply because they cannot afford their bail.¹¹

Meaningful statewide bail reform that greatly reduces courts' imposition of financial bonds, or outlaws it altogether, is a crucial step for the state, ensuring that pretrial detention occurs only in the most limited of circumstances. Keeping people arrested on misdemeanor and low-level felony charges from being booked into jail in the first place by giving them tickets instead of incarcerating them will also have a significant impact on the pretrial jail population.

Ohio's inefficient parole system must also be reformed. Only a handful of people have been released from prison through parole over the past several years even though allowing people to reenter society as productive community members can improve public

safety and promotes healing and rehabilitation for both victims and people who are incarcerated. To address this injustice, the state should create more transparency in parole proceedings, release people who have rehabilitated themselves regardless of their underlying offense, and allow for automatic release when a minimum sentence expires except if there is a risk to public safety.

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

The State of the Ohio Prison System

Ohio had the fifth-largest prison population in the country in 2016 – having grown nearly fourfold between 1980 and 2016.¹² While the national state imprisonment rate dropped by 7 percent between 2000 and 2016, Ohio’s imprisonment rate rose by 11 percent during the same period.¹³ At 449 per 100,000 residents, Ohio’s imprisonment rate was the 13th highest in the country in 2016.¹⁴ As of January 2017, there were 50,362 people in Ohio prisons.¹⁵

When you include people on probation, the reach of the criminal justice system is even greater. At 2,706 per 100,000 adult residents, Ohio had the third-highest adult probation rate in the country in 2015, meaning that one in 48 Ohio residents was on probation.¹⁶

AT A GLANCE

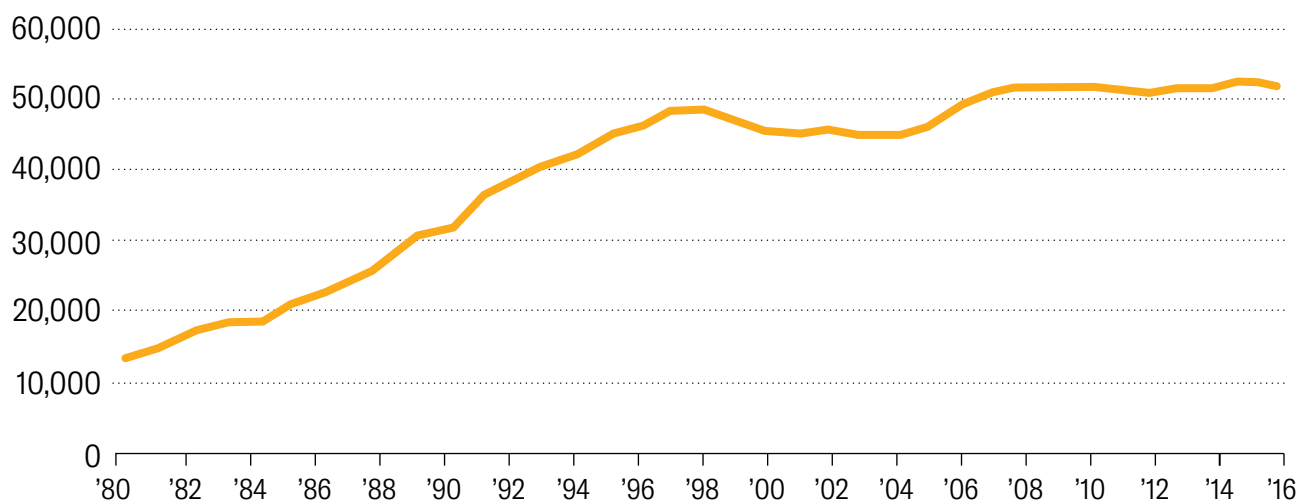
OHIO PRISONS

Ohio had the **fifth-largest** prison population in the country in 2016.

Ohio ranked **13th nationally** in the rate of people imprisoned in 2016.

50,362 people were imprisoned in Ohio as of January 2017.

OHIO PRISON POPULATION



What Is Driving People Into Prison?

In Ohio, a litany of offenses drives people into prisons.¹⁷ Drug convictions accounted for 28 percent of all commitments to Ohio prisons in 2016. Within this group, 15 percent were admitted for drug possession, 9 percent for drug trafficking, and 3 percent for the illegal manufacturing of drugs.¹⁸

In addition, 9 percent of all commitments in 2016 were for offenses against justice, which include crimes that affect law enforcement or the courts in Ohio. In 2016, 400 people (2 percent of all commitments) were admitted for resisting arrest or failing to comply with an order or signal of a police officer. Convictions for all property offenses accounted for 24 percent of commitments, including 10 percent of commitments for burglary offenses.¹⁹

The number of people committed to Ohio prisons every year decreased by 31 percent between 2006 and 2016,²⁰ likely due in part to Justice Reinvestment²¹ and other criminal justice reforms in the state. Commitments for every category of felony decreased over the same time period, with 86 percent of the total decrease attributed to the two least serious felony categories. Commitments for these categories – fourth- and fifth-degree felonies – have both nearly halved between 2006 and 2016.²² These felony categories include offenses

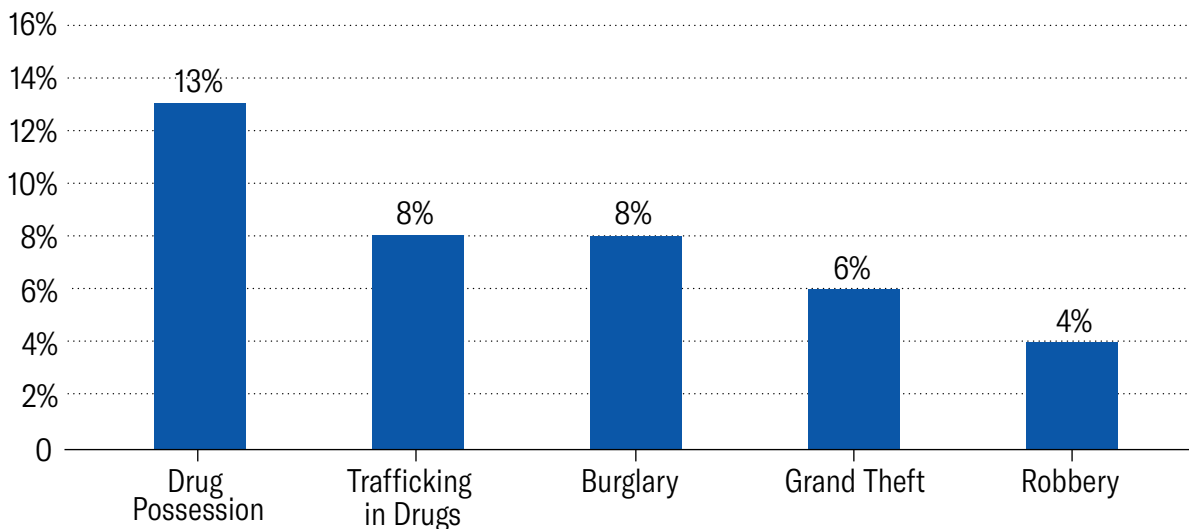
like failure to pay child support and failure to notify the court of a change of address.

Despite this downward trend, yearly commitments for firearm offenses have increased by 4 percent since 2006, accounting for 6 percent of all commitments in 2016.²³

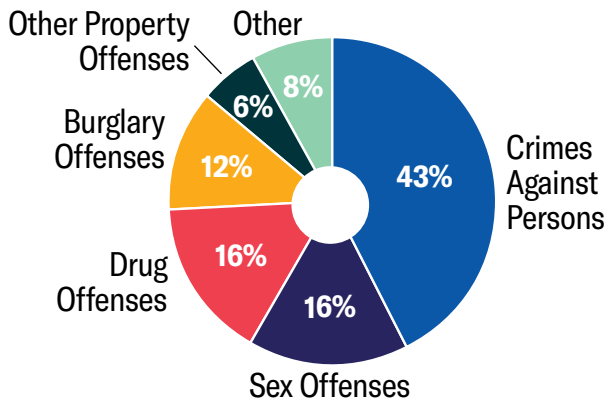
When people violate the terms of their community supervision, they can be sent back to prison. In 2015, violations of community supervision accounted for nearly one in four admissions to prison in Ohio.²⁴ Approximately 10 percent of people released to parole and postrelease control in 2012 were returned to prison within three years for a technical violation – a rule violation that is not on its own illegal, such as missing a curfew or failing to report for a scheduled visit. In addition, approximately 20 percent of people who were released from prison in 2012 on judicial release – a form of early release that is subject to judicial discretion and available to people serving time for certain crimes and sentences – returned to prison within three years for a technical violation.²⁵

Compounding matters, Ohio prisons often lack access to treatment options and reentry support for people convicted of a crime, leading many people to leave prison only to return to criminal activity. Nearly 30 percent of all people released from Ohio prisons in 2012

OHIO PRISON ADMISSIONS BY TOP OFFENSE TYPES (2016)



OHIO PRISON POPULATION PRIMARY OFFENSES (2017)



were sent back to prison within three years, either for a technical violation of their community supervision or for a new crime.²⁶

Lastly, Ohio has harsh laws that trigger mandatory prison sentences for individuals in many situations, including when someone has a prior felony conviction. These sentencing enhancements can require prison sentences for someone who would otherwise be eligible for alternative programs.²⁷

The Current Prison and Jail Population

In 2015, 17,350 people were serving time in local Ohio jails. Of these people, 64 percent were awaiting trial and had not been convicted of a crime.²⁸ Reports show racial disparities in Ohio's jail population. In 2015, Black people represented 35 percent of the total jail population in Ohio, despite comprising only 12 percent of Ohio's overall population.²⁹ In the same year, women made up 19 percent of Ohio's jail population. This proportion has been increasing relatively steadily since 1970, when women made up 5 percent of Ohio jails.³⁰

In 2017, 16 percent of Ohio's prison population was serving time for a drug offense, including 6 percent for drug trafficking and 6 percent for drug possession.³¹

AT A GLANCE

OHIO JAIL AND PRISON POPULATIONS

64 percent of the local jail population in 2015 was awaiting trial and had not been convicted of a crime.

16 percent of the 2017 prison population was serving time for a drug offense.

11 percent of the state prison population was imprisoned in private prisons in May 2018.

The number of people serving time for illegally manufacturing drugs has more than tripled over the past decade and accounted for 3 percent of the 2017 prison population. And the number of people imprisoned for any burglary offense has grown by 25 percent since 2007, accounting for 12 percent of the 2017 prison population.³²

Thirteen percent of people imprisoned in Ohio in 2017 were serving time for a robbery offense, 10 percent for rape, and 6 percent for felonious assault.³³ Four percent were imprisoned for offenses against justice, which include crimes like failure to appear in court, and another 18 percent were imprisoned for property offenses, including 12 percent for burglary offenses.³⁴ Despite the increase in yearly commitments for firearm offenses,³⁵ the proportion of the prison population serving time for these offenses has remained relatively constant at 3 percent over the past decade.³⁶

Ohio has three private prisons. Collectively, they held approximately 11 percent of the state prison population in May 2018.³⁷ Between 2000 and 2015, the number of people held in private prisons in Ohio tripled from 1,918 to 6,050 people.³⁸

Why Do People Stay in Prison for So Long?

The length of imprisonment for people released from prison in a given year decreased by 15 percent overall between 2004 and 2014, but not equally across all offense types. People released in 2014 after serving time for the lowest-level felony offenses (felony 5) spent an average of 28 percent more time in prison in 2014 than those released in 2004. Average length of imprisonment for drug offenses has increased at an even faster rate, growing by 59 percent between 2004 and 2014 and reaching an average of 20 months in 2014.³⁹ The number of people in Ohio prisons serving life without parole sentences doubled between 2010 and 2017—from 302 to 606 people.⁴⁰

Determinate sentencing measures, like Ohio’s 1996 truth-in-sentencing law, have greatly increased the percentage of a sentence that people must serve. Ohio also offers limited options for people to earn time off of their sentence (only by completing certain institutional programs), and earned time is capped at 8 percent of their sentence.⁴¹

In addition, the Ohio General Assembly dictates mandatory minimum sentences for a wide variety of crimes, including many drug offenses. These predetermined sentences remove judicial discretion and can produce lengthy sentences, even for less serious offenses. For example, anyone in Ohio

convicted of possessing a firearm while committing a criminal offense is subject to a mandatory minimum sentence of one year.⁴² Research has demonstrated that mandatory minimum sentences have generally been ineffective in deterring crime and are associated with increasing correctional populations and costs.⁴³ Since 2000, more than half of all states have enacted legislation to roll back mandatory sentences, with states reporting various outcomes of these reforms, including decreases in correctional populations and significant cost savings.⁴⁴

Who Is Imprisoned

Black Ohioans: Incarceration in Ohio has a profoundly disparate impact on communities of color. At 2,113 per 100,000, the imprisonment rate of Black adults in Ohio was nearly six times that of white adults in 2016, resulting in one in 23 adult Black men in prison. Although they made up just 12 percent of the 2016 adult population in Ohio, Black people comprised 44 percent of the state’s prison population.⁴⁵

Latino Ohioans: At 460 per 100,000 people, the adult imprisonment rate for Latinos in Ohio in 2016 was considerably higher than for white adults (362 per 100,000). In 2016, one in 115 adult Latino men was in prison.⁴⁶

Female Ohioans: Between 2007 and 2017, the number of women in Ohio prisons grew by 12 percent, far outpacing the growth of the general prison population, which grew by just 1 percent over the same time period.⁴⁷ In 2014, an estimated one in five women committed to Ohio prisons reported a history of physical abuse as a child or an adolescent, and three in 10 reported a history of sexual abuse during childhood or adolescence.⁴⁸

Older Ohioans: The Ohio prison population is also rapidly aging. The average age has grown by 7 percent over the past decade, reaching nearly 38 in 2017. Though generally considered to pose a negligible risk to public safety,⁴⁹ the number of people older than 50 imprisoned in Ohio has increased by 58 percent between 2007 and 2017, accounting for almost one-fifth of the total prison population in Ohio in 2017.⁵⁰

AT A GLANCE

LENGTH OF STAY

The length of imprisonment for drug offenses increased by **59 percent** between 2004 and 2014.

The average length of imprisonment for drug offenses in 2014 was **20 months**.

The average time spent in prison for the lowest-level felonies increased by **28 percent** between 2004 and 2014.

AT A GLANCE

DEMOGRAPHICS

44 percent of the 2016 Ohio prison population was Black.

One in **115 adult Latino men** were imprisoned in Ohio in 2016.

The female prison population increased by **12 percent** between 2007 and 2017.

People With Mental Health and Substance Use Disorders

In 2014, an estimated 35 percent of people admitted to prison in Ohio were reported to have a history of mental health problems. This percentage is even higher among women: 61 percent of women admitted to Ohio prisons in 2014 were reported to have a history of mental health problems.⁵¹ Between 2005 and 2013, the number of people on the mental health caseload grew by 27 percent,⁵² while the total Ohio prison population grew just 13 percent over the same time period.⁵³ People with mental health needs are disproportionately represented in the segregated population in Ohio prisons: In 2016, 27 percent of

people held in segregation were reported to be on the mental health caseload, compared to 21 percent of the total prison population.⁵⁴ People with mental health needs also spend a longer time in solitary confinement, on average, than individuals with no reported mental health needs.⁵⁵

In addition, an estimated 92 percent of people admitted to Ohio prisons in 2014 were reported to have a history of drug abuse.⁵⁶ In 2011, heroin and opioids surpassed cocaine as the most common drugs used by people admitted to prison. In 2015, nearly 20 percent of all people admitted to Ohio prisons claimed to be using heroin or opioids – compared to approximately 5 percent in 2005.⁵⁷

Budget Strains

As Ohio's prison population has risen, so has the cost burden. Ohio spent more than \$1.8 billion of its general fund on corrections in 2016.⁵⁸ That year, more than half (53 percent) of the money that the Ohio Department of Rehabilitation and Correction (ODRC) spent on people imprisoned went towards security and facility maintenance, while less than 5 percent went towards mental health services and an even smaller percentage (3 percent) went towards education services.⁵⁹ Ohio general fund corrections spending increased by 169 percent between 1985 and 2016, forcing tradeoffs in other state priorities, like education.⁶⁰

AT A GLANCE

MENTAL HEALTH AND SUBSTANCE USE DISORDERS

About **35 percent** of people admitted to prison in 2014 had a reported history of mental health problems.

An estimated **92 percent** of people admitted to Ohio prisons in 2014 had a reported history of drug abuse.

Nearly **20 percent** of people admitted to Ohio prisons in 2015 reported using heroin or opioids.

AT A GLANCE

BUDGET

Ohio spent more than **\$1.8 billion** of its general fund on corrections in 2016.

Less than **5 percent** of ODRC's spending on people in prison went to mental health services in 2016.

General fund corrections spending increased by **169 percent** between 1985 and 2016.

Ending Mass Incarceration in Ohio: A Path Forward

There are many potential policy changes that can help Ohio end its mass incarceration crisis, but it will be up to the people and policymakers of Ohio to decide which changes to pursue. To reach a 50 percent reduction, policy reforms will need to reduce the amount of time people serve in prisons and/or reduce the number of people entering prison in the first place.

Reducing the Pretrial Jail Population

More than half of the people currently in Ohio jails are there awaiting resolution of their pending case and have not been found guilty of a crime.⁶¹ In nearly all cases of pretrial detention, the person is in jail simply because they cannot afford their bail.⁶²

There is a direct relationship between pretrial detention and conviction rates.⁶³ This is largely accounted for by the increase in guilty pleas resulting from the coercive nature of pretrial incarceration and the limited ability to assist in one's own defense from a jail cell.⁶⁴ As convictions grow, so do jail and prison populations.

Moreover, a history of previous convictions often leads to a cycle of further detention. In some cases, this is because punishments become more punitive if a person has a criminal history. Thus, a person with a criminal record may end up in jail or prison rather than receiving probation, community control, or a fine. For others, collateral consequences of convictions, such as an inability to find gainful employment, can result in the commitment of quality of life crimes out of financial desperation, thus placing them back in the criminal justice system where they are again subject to pretrial

incarceration, conviction, and subsequent detention through the imposition of a sentence.

Because pretrial incarceration directly and indirectly increases jail and prison populations, any campaign to decarcerate Ohio jails and prisons must include a plan for robust and meaningful bail and pretrial reform that ensures pretrial detention occurs only in the most limited of circumstances. Pretrial detention should not occur because a person is too poor to afford their bail.

- **Cite and release:** Keeping people from being booked in jail in the first place will have a significant impact on the pretrial jail population. A study of one Ohio county showed that many people are arrested and booked in jail only to be released several days later on personal recognizance bonds.⁶⁵ Many of these people are arrested on misdemeanor and low-level felony charges that would be appropriate for cite-and-release summonses rather than arrest. In other words, there need to be policies that allow and encourage law enforcement to cite people with a summons for a court rather than arresting them and booking them in county jails.
- **Bail reform:** The Ohio General Assembly must pass meaningful statewide bail reform that greatly reduces courts' imposition of financial bonds or outlaws it altogether. To be effective, this legislation must, at a minimum, do the following:
 - Require an "ability to pay" hearing – with counsel – whenever financial bond is being set

- Create presumptions of release “on recognizance” or without conditions
- Require use of the “least restrictive” option for pretrial release
- Provide reminders for court appearances, especially for people with mental disabilities
- Require that, if used, financial bond be no higher than absolutely necessary to reasonably ensure court appearance and require written explanation whenever money bail is set, including why this option was the “least restrictive” to achieve the state’s compelling interest
- Require the availability of free pretrial services to residents in all of Ohio’s common pleas and municipal courts

In addition to statewide legislative reform, there also needs to be a concerted effort by local jurisdictions to reform their systems for setting bail. County and municipal courts should, regardless of legislative forms, enact court rules that provide robust procedural protections for pretrial defendants in the spirit of those listed above. Even better, courts could also provide educational training for judges on how to best provide those protections to defendants.

- **Preventing larger jails:** A 2018 report by the Vera Institute of Justice titled “In Our Backyards” notes that a driver of jail population increases in some places has been the building of increasingly larger jails.⁶⁶ To quote a phrase in one of the report’s stories regarding the building of new and larger jails in rural New York, “If you build it, they will come.” With this in mind, it is important to ensure that jurisdictions that are considering building new jails do not increase the size of those facilities. In fact, ideally those jails would become smaller in size if rebuilt or built anew. Right now, Ohio has several counties that are either actively engaging in plans to build a new jail facility or contemplating the need for one in the near future. As of July 2018,

those counties include Butler, Clark, Lake, and Lucas.⁶⁷

- **Focusing on local actors:** Similarly, the Vera Institute’s report also noted that local actors can also contribute to an increase in jail population.⁶⁸ Judges, prosecutors, public defenders, and law enforcement all have a significant role in determining whether someone is held pretrial or whether they are arrested at all. Thus, Ohio should prioritize educating local actors on how their practices bloat jail populations and harm communities.

Reducing Time Served

Reducing time served, even by just a few months, can lead to thousands of fewer people in Ohio’s prisons.

- **Release reform:** The release of people in prison through Ohio’s parole system has slowed to a trickle over the past several years, with only a handful of people released from state prison prior to their maximum sentence. It is crucial that we enable those who have been rehabilitated to reenter society as productive and law-abiding citizens.

Each year, more than 1,000 imprisoned people in Ohio are considered for parole.⁶⁹ Thus, the Ohio Parole Board plays a crucial role in determining the size and composition of the prison population. Parole release decisions impact the allocation of scarce state funds. Supervising a parolee costs about one-tenth of what’s required to keep that person in prison, and prison health care costs rise as people who are incarcerated get older.^{70,71} In recent years, the Parole Board has granted release to a small portion of people given a hearing (16 percent in 2017).⁷² The reasons for these decisions are often unclear and provide no guidance about how people who are incarcerated can increase their chances of being paroled.

To reform Ohio’s inefficient and unjust parole system, we propose the following three recommendations:

- **Create more transparency in parole decisions:** While the Parole Board has broad discretion in determining who is granted parole, it does not always provide detailed information about how it comes to its decisions. There are 18 categories used to determine if a person may be released on parole, but people are typically told only that they have been denied parole due to a public safety risk rooted in the seriousness of their crime. These decisions happen behind closed doors, and generally the letters meant to explain the parole decision include scant information, leaving people who are incarcerated with no insight into why they were denied.
- **Put less weight on the seriousness of the offense:** As stated above, many individuals eligible for parole are blocked from release simply because of the seriousness of their underlying offense. Public officials should recognize that simply incarcerating a person who has shown signs of being rehabilitated makes no fiscal sense and may actually harm public safety.

Our criminal justice system takes the seriousness of the crime into account in the initial sentencing. Thus, when the board – an appointed body subject to no meaningful oversight – denies parole to someone who has provided evidence that they have changed, it is simply resentencing the person. Instead, the board should conduct a holistic review, taking into account the steps a person has taken towards rehabilitation.

- **Increase parole grant rates:** Ohio should revise the law to allow for automatic release when someone’s minimum sentence expires, except when their behavior has

demonstrated a risk to public safety. If the board wants to keep a person in prison longer than the minimum sentence, it should be required to present compelling evidence demonstrating that the person would pose a threat to public safety. The presumption for release should increase with each parole hearing, with denial requiring a detailed explanation of the reasons for keeping the candidate in prison.

Reducing Admissions

- **Alternatives to incarceration – treatment:** The opioid epidemic continues to impact Ohio, with the number of overdoses and overdose deaths increasing annually.⁷³ These numbers would be even greater without some of the recent changes to the way the state deals with drug use and addiction. These changes include increased access to naloxone, use of Drug Abuse Response Teams (DARTs) and related efforts at the local level, adoption of low-dose protocols for opioids, specialized drug courts, and Medicaid expansion, which led to the expansion of medication-assisted treatment.

Still, it is clear that these efforts are not enough. Ohio’s struggle with opioids is exacerbated by the state’s insistence on addressing drug addiction via incarceration rather than a public health approach. Ohio should shift its effort away from the criminalization of addiction and instead focus on harm reduction. In order to more effectively combat the opioid problems in Ohio, additional measures related to treatment, data collection, provider education, and ancillary services should be adopted, such as the following:

- Increase modalities of treatment to include assessments of drug users independent of court scrutiny and influence in order to increase the chances that defendants are matched with an appropriate program

and individualized treatment, including culturally competent treatment and treatment for people with dual diagnoses of both addiction and mental health disabilities.

- Continue the expansion of medically assisted treatment, like buprenorphine, on demand. Unlike methadone treatment, which is restricted to a limited supply of licensed programs, other treatments can be prescribed by a general physician in an office-based setting.
- Increase the availability of pharmaceutical treatments in prison, drug courts, and mandated treatment programs.
- Assess the prevalence and effectiveness of mandating treatment for people based solely on drug-related arrests rather than actual need for treatment.
- Develop a treatment guide for service providers to promote effective treatment options and provide evidence-based research from other counties or municipalities, including but not limited to syringe exchange programs and other harm reduction modalities.
- Conduct a study on the efficacy and feasibility of heroin maintenance therapy for people who do not respond well to other treatments.
- **Sentencing reform — addressing technical violations of parole, postrelease control, and early release:** Recognizing the negative impact of sending people back to prison for technical violations of parole and postrelease control, House Bill 49 (passed in June 2017) capped the amount of time for which those who originally committed fourth- and fifth-degree felonies can be reincarcerated for technical violations. For those with original fourth-degree felony convictions, the cap is 90 days. For those with fifth-degree felonies, it is 180 days. This reform also applies to new misdemeanor

offenses. While this change is an improvement, the overall impact is currently unclear, as concerns mount that judges are not complying with this new restriction. Ohio must take steps to ensure that courts do not continue to ignore this change. Additionally, the state should push to expand the restriction further.

Reducing Racial Disparities

Reducing the number of people who are imprisoned in Ohio 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 disproportionality 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 phases such as pretrial detention, conviction, sentencing, and postrelease opportunity.⁷⁴ Targeting only one of the factors that drives racial disparity would not adequately address discrimination across the system.

Racial disparity is so ingrained in the system that it cannot be mitigated by solely reducing the scale of mass incarceration. Shrinking the prison 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 2012.⁷⁵ However, the state did not target racial disparities in incarceration and, in 2014, Black people

“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.”⁷⁷

— From *The New Jim Crow*, Michelle Alexander

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.⁷⁶

Ending mass incarceration is critical to eliminating racial disparities, but not sufficient without companion efforts that take aim at other drivers of racial inequities

outside of the criminal justice system. Reductions in disparate imprisonment rates require implementing explicit racial justice strategies.

Some examples include:

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

TAKING THE LEAD

Prosecutors: They make decisions on when to prosecute an arrest, what charges to bring, and which plea deals to offer. They can decide to divert people to treatment programs (for example, drug or mental health programs) rather than send people to prison.

State lawmakers: They decide which offenses to criminalize, what penalties to include, how long sentences can be, and when to take away judges’ discretion. They can change criminal laws to remove prison as an option when better alternatives exist or allow alternatives where previously the law had required prison. They can create new alternatives or provide the resources and direction for the development of new alternatives by others.

Parole boards: They decide when to allow people to leave prison. In Ohio, the Parole Board is an especially important player when it comes to reforming how long people spend in prison.

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.

potential disparities that may result from new laws or rules

- Fighting discriminatory gang sentencing enhancements that disproportionately target people of color
- Addressing any potential racial bias in risk assessment instruments used to assist decision-making in the criminal justice system
- Shifting funding from law enforcement and corrections to community organizations, job creation, schools, drug and mental health treatment, and other social service providers

Forecaster Chart

There are many pathways to cutting the prison population in Ohio 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 Ohio, 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 by 2025*****
Drug offenses	<ul style="list-style-type: none"> • Institute alternatives that end all admissions for drug possession (3,312 fewer people admitted) • Reduce average time served for drug distribution by 60% (from 2.07 to 0.83 years) • Institute alternatives that reduce admissions for drug distribution by 60% (1,832 fewer people admitted) 	14.36% reduction (8,619 fewer people)	White: 0.7% decrease Black: 1.1% increase Hispanic/Latino: 5.2% decrease Native American: 10.5% increase Asian: 5.6% increase Other: 2.5% increase	\$131,636,523
Burglary	<ul style="list-style-type: none"> • Reduce average time served by 60% (from 2.77 to 1.11 years) • Institute alternatives that reduce admissions by 40% (969 fewer people admitted) 	8.40% reduction (5,044 fewer people)	White: 1.9% decrease Black: 2.1% increase Hispanic/Latino: 2.7% increase Native American: 0.7% increase Asian: 2.5% increase Other: 1.5% increase	\$68,544,165

Impact Compared to 2025 Baseline*

Offense category**	Policy outcome***	Prison population impact	Impact on racial and ethnic makeup of prison population****	Cost savings by 2025*****
Robbery	<ul style="list-style-type: none"> Reduce average time served by 60% (from 3.54 to 1.42 years) Institute alternatives that reduce admissions by 30% (576 fewer people admitted) 	7.93% reduction (4,762 fewer people)	White: 2.6% increase Black: 3.3% decrease Hispanic/Latino: 2.8% increase Native American: 5.0% increase Asian: 2.1% increase Other: 3.3% increase	\$60,092,417
Public order offenses*****	<ul style="list-style-type: none"> Reduce average time served by 70% (from 1.67 to 0.50 years) Institute alternatives that reduce admissions by 60% (1,739 fewer people admitted) 	7.07% reduction (4,246 fewer people)	White: 2.0% decrease Black: 2.4% increase Hispanic/Latino: No change Native American: 0.3% decrease Asian: 5.4% decrease Other: 1.5% decrease	\$65,746,307
Assault	<ul style="list-style-type: none"> Reduce average time served by 60% (from 2.06 to 0.82 years) Institute alternatives that reduce admissions by 40% (968 fewer people admitted) 	6.31% reduction (3,786 fewer people)	White: 1.3% increase Black: 1.5% decrease Hispanic/Latino: 0.4% decrease Native American: 3.5% increase Asian: 3.8% increase Other: 1.8% decrease	\$54,414,797
Theft	<ul style="list-style-type: none"> Reduce average time served by 60% (from 1.20 to 0.48 years) Institute alternatives that reduce admissions by 60% (684 fewer people admitted) 	1.91% reduction (1,146 fewer people)	White: 1.2% decrease Black: 1.3% increase Hispanic/Latino: 1.1% increase Native American: 0.9% increase Asian: 1.0% increase Other: 1.2% increase	\$18,348,300
Weapons offenses*****	<ul style="list-style-type: none"> Reduce average time served by 60% (from 1.38 to 0.55 years) 	1.67% reduction (1,004 fewer people)	White: 1.0% increase Black: 1.2% decrease Hispanic/Latino: 0.7% increase Native American: 1.6% decrease Asian: 1.0% increase Other: 0.9% increase	\$13,656,625

Impact Compared to 2025 Baseline*				
Offense category**	Policy outcome***	Prison population impact	Impact on racial and ethnic makeup of prison population****	Cost savings by 2025*****
Other property offenses*****	<ul style="list-style-type: none"> Reduce average time served by 70% (from 0.97 to 0.29 years) Institute alternatives that reduce admissions by 60% (688 fewer people admitted) 	1.62% reduction (974 fewer people)	White: 0.7% decrease Black: 0.8% increase Hispanic/Latino: 1.0% increase Native American: 1.6% increase Asian: 0.3% decrease Other: 1.3% increase	\$15,996,153
Fraud	<ul style="list-style-type: none"> Reduce average time served by 60% (from 1.07 to 0.43 years) Institute alternatives that reduce admissions by 60% (308 fewer people admitted) 	0.77% reduction (463 fewer people)	White: 0.2% decrease Black: 0.3% increase Hispanic/Latino: 0.4% increase Native American: 0.8% increase Asian: 2.2% decrease Other: No change	\$7,371,088

*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.

***People imprisoned for technical violations of supervision are included in this analysis. However, the information in the data does not reliably distinguish technical violations from other types of prison admissions. Therefore, reducing admissions for technical violations would be one way to work towards achieving the reforms listed here.

****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 Ohio, where Black people make up 44 percent of the prison population but constitute only 12 percent of the state’s total population.

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

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

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

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

Total Fiscal Impact

If Ohio were to implement reforms leading to the changes described above, 30,043 fewer people would be in prison in Ohio by 2025, a 50.04 percent decrease. This would lead to a total cost savings of \$1,322,495,542 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 Ohio'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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